

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

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**SENATE BILL 729  
Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/17/14  
Third Edition Engrossed 6/25/14**

Short Title: Coal Ash Management Act of 2014.

(Public)

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Sponsors:

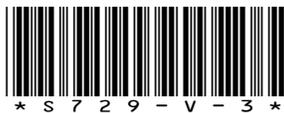
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Referred to:

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May 15, 2014

1 A BILL TO BE ENTITLED  
2 AN ACT TO (1) PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL  
3 DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE  
4 IMPOUNDMENTS; (2) ESTABLISH A MORATORIUM ON CERTAIN RATE CASES;  
5 (3) CREATE THE COAL ASH MANAGEMENT COMMISSION TO REVIEW AND  
6 APPROVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS  
7 CLASSIFICATIONS AND CLOSURE PLANS AND OTHERWISE STUDY AND  
8 MAKE RECOMMENDATIONS ON LAWS GOVERNING MANAGEMENT OF COAL  
9 COMBUSTION RESIDUALS; (4) REQUIRE EXPEDITED REVIEW BY THE  
10 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF ANY  
11 PERMIT NECESSARY TO CONDUCT ACTIVITIES REQUIRED BY THIS ACT; (5)  
12 ESTABLISH VARIOUS REPORTING REQUIREMENTS TO THE GENERAL  
13 ASSEMBLY, INCLUDING A QUARTERLY REPORT FROM THE DEPARTMENT OF  
14 ENVIRONMENT AND NATURAL RESOURCES ON ITS OPERATIONS,  
15 ACTIVITIES, PROGRAMS, AND PROGRESS WITH RESPECT TO ITS  
16 OBLIGATIONS UNDER THIS ACT FOR COAL COMBUSTION RESIDUALS  
17 SURFACE IMPOUNDMENTS; (6) PROHIBIT LOCAL GOVERNMENT REGULATION  
18 OF MANAGEMENT OF COAL COMBUSTION RESIDUALS OR COAL  
19 COMBUSTION PRODUCTS; (7) PROHIBIT CONSTRUCTION OF NEW OR  
20 EXPANSION OF EXISTING COAL COMBUSTION RESIDUALS SURFACE  
21 IMPOUNDMENTS EFFECTIVE JULY 1, 2014; (8) PROHIBIT THE DISPOSAL OF  
22 COAL COMBUSTION RESIDUALS INTO COAL COMBUSTION RESIDUALS  
23 SURFACE IMPOUNDMENTS AT COAL-FIRED GENERATING UNITS THAT ARE  
24 NO LONGER PRODUCING COAL COMBUSTION RESIDUALS EFFECTIVE  
25 OCTOBER 1, 2014; (9) PROHIBIT DISPOSAL OF STORMWATER TO COAL  
26 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE DECEMBER  
27 31, 2018; (10) REQUIRE ALL ELECTRIC GENERATING FACILITIES TO CONVERT  
28 TO GENERATION OF DRY FLY ASH ON OR BEFORE DECEMBER 31, 2017, AND  
29 DRY BOTTOM ASH ON OR BEFORE DECEMBER 31, 2020, OR RETIRE; (11)  
30 REQUIRE THE ASSESSMENT OF GROUNDWATER AT COAL COMBUSTION  
31 RESIDUALS SURFACE IMPOUNDMENTS; (12) REQUIRE CORRECTIVE ACTION  
32 FOR THE RESTORATION OF GROUNDWATER QUALITY AT COAL  
33 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (13) REQUIRE A  
34 SURVEY OF DRINKING WATER SUPPLY WELLS AND REPLACEMENT OF  
35 CONTAMINATED WATER SUPPLIES; (14) REQUIRE THE IDENTIFICATION,



1 ASSESSMENT, AND CORRECTION OF UNPERMITTED DISCHARGES FROM  
2 COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (15) REQUIRE  
3 THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO, AS  
4 SOON AS PRACTICABLE BUT NO LATER THAN AUGUST 1, 2015, PRIORITIZE  
5 FOR THE PURPOSE OF CLOSURE AND REMEDIATION COAL COMBUSTION  
6 RESIDUALS SURFACE IMPOUNDMENTS, INCLUDING ACTIVE AND RETIRED  
7 SITES, BASED ON THESE SITES' RISKS TO PUBLIC HEALTH, SAFETY,  
8 WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES; (16) REQUIRE  
9 OWNERS OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS TO  
10 SUBMIT A PROPOSED PLAN FOR CLOSURE OF ALL IMPOUNDMENTS TO THE  
11 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (17) REQUIRE  
12 CLOSURE AND REMEDIATION OF CERTAIN COAL COMBUSTION RESIDUALS  
13 SURFACE IMPOUNDMENTS AS SOON AS PRACTICABLE, BUT NO LATER THAN  
14 AUGUST 1, 2019; (18) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND  
15 NATURAL RESOURCES TO ESTABLISH A SCHEDULE AND PROCESS FOR  
16 CLOSURE AND REMEDIATION OF ALL COAL COMBUSTION RESIDUALS  
17 SURFACE IMPOUNDMENTS BASED UPON THE DEPARTMENT'S RISK  
18 ASSESSMENT OF THESE SITES, BASELINE REQUIREMENTS SET BY THE  
19 GENERAL ASSEMBLY, EVALUATION OF PROPOSED CLOSURE PLANS  
20 SUBMITTED BY IMPOUNDMENT OWNERS, AND INPUT FROM THE PUBLIC  
21 AND OTHER STAKEHOLDERS; (19) ESTABLISH MINIMUM STATUTORY  
22 REQUIREMENTS FOR STRUCTURAL FILL PROJECTS USING COAL  
23 COMBUSTION PRODUCTS AND REQUIRE THE DEPARTMENT OF  
24 ENVIRONMENT AND NATURAL RESOURCES TO INVENTORY AND INSPECT  
25 CERTAIN STRUCTURAL FILL PROJECTS; (20) PLACE A MORATORIUM ON  
26 CERTAIN PROJECTS USING COAL COMBUSTION PRODUCTS AS STRUCTURAL  
27 FILL UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF  
28 ENVIRONMENT AND NATURAL RESOURCES AND THE ENVIRONMENTAL  
29 MANAGEMENT COMMISSION TO STUDY THE ADEQUACY OF CURRENT LAW  
30 GOVERNING USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL  
31 AND FOR BENEFICIAL USE; (21) PLACE A MORATORIUM ON THE EXPANSION  
32 AND CONSTRUCTION OF COAL COMBUSTION RESIDUALS LANDFILLS UNTIL  
33 AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND  
34 NATURAL RESOURCES TO ASSESS THE RISKS TO PUBLIC HEALTH, SAFETY,  
35 WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES OF COAL  
36 COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS LOCATED BENEATH  
37 THESE LANDFILLS TO DETERMINE THE ADVISABILITY OF CONTINUED  
38 OPERATION OF THESE LANDFILLS; (22) STRENGTHEN THE REPORTING AND  
39 NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF  
40 WASTEWATER TO WATERS OF THE STATE; (23) REQUIRE CERTAIN  
41 EMERGENCY CALLS TO BE RECORDED; (24) REQUIRE DEVELOPMENT OF  
42 EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS  
43 AND AMEND OTHER DAM SAFETY LAW REQUIREMENTS APPLICABLE TO  
44 COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (25) TRANSFER  
45 SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC  
46 HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION; (26) AMEND  
47 COMPLIANCE BOUNDARY PROVISIONS; (27) PROVIDE FOR VARIOUS STUDIES;  
48 (28) REQUIRE THE STATE CONSTRUCTION OFFICE AND THE DEPARTMENT OF  
49 TRANSPORTATION TO DEVELOP TECHNICAL SPECIFICATIONS FOR USE OF  
50 COAL COMBUSTION PRODUCTS; AND (29) PROVIDE RESOURCES FOR  
51 IMPLEMENTATION OF THIS ACT.

1 The General Assembly of North Carolina enacts:

2  
3 **PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL**  
4 **DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE**  
5 **IMPOUNDMENTS; MORATORIUM ON RATE CASES**

6 **SECTION 1.(a)** Article 7 of Chapter 62 of the General Statutes is amended by  
7 adding a new section to read:

8 **"§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion**  
9 **residuals surface impoundments to the surface waters of the State.**

10 The Commission shall not allow an electric public utility to recover from the retail electric  
11 customers of the State costs resulting from an unlawful discharge to the surface waters of the  
12 State from a coal combustion residuals surface impoundment, unless the Commission  
13 determines the discharge was due to an event of force majeure. For the purposes of this section,  
14 "coal combustion residuals surface impoundments" has the same meaning as in  
15 G.S. 130A-309.201. For the purposes of this section, "unlawful discharge" shall mean a  
16 discharge that results in a violation of State or federal surface water quality standards."

17 **SECTION 1.(b)** Section 1(a) of this act is effective when it becomes law and  
18 applies to discharges occurring on or after January 1, 2014.

19 **SECTION 2.(a)** Moratorium on Cost Recovery. – The Utilities Commission shall  
20 not issue an order authorizing an electric public utility the recovery of any costs related to coal  
21 combustion residuals surface impoundments that were not included in the utility's cost of  
22 service approved in its most recent general rate case until the end of the moratorium provided  
23 in this section. The moratorium established under this section shall not apply to the net  
24 recovery of any fuel and fuel-related costs under G.S. 62-133.2. For the purposes of this  
25 section, "coal combustion residuals surface impoundments" has the same meaning as in  
26 G.S. 130A-309.201. The moratorium in this section shall end January 15, 2015.

27 **SECTION 2.(b)** Purpose of Moratorium. – The purpose of the moratorium is to  
28 allow the State to study the disposition of coal combustion residuals surface impoundments,  
29 including any final rules adopted by the United States Environmental Protection Agency on the  
30 regulation of coal combustion residuals.

31  
32 **PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL**  
33 **COMBUSTION RESIDUALS**

34 **SECTION 3.(a)** Article 9 of Chapter 130A of the General Statutes is amended by  
35 adding a new Part to read:

36 "Part 2I. Coal Ash Management.

37 "Subpart 1. Short Title, Definitions, and General Provisions.

38 **"§ 130A-309.200. Title.**

39 This Part may be cited as the "Coal Ash Management Act of 2014."

40 **"§ 130A-309.201. Definitions.**

41 Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and  
42 the following definitions shall apply throughout this Part:

- 43 (1) "Beneficial and beneficial use" means projects promoting public health and  
44 environmental protection, offering equivalent success relative to other  
45 alternatives, and preserving natural resources.
- 46 (2) "Boiler slag" means the molten bottom ash collected at the base of slag tap  
47 and cyclone type furnaces that is quenched with water. It is made up of hard,  
48 black, angular particles that have a smooth, glassy appearance.
- 49 (3) "Bottom ash" means the agglomerated, angular ash particles formed in  
50 pulverized coal furnaces that are too large to be carried in the flue gases and

- 1 collect on the furnace walls or fall through open grates to an ash hopper at  
2 the bottom of the furnace.
- 3 (4) "Coal combustion products" means fly ash, bottom ash, boiler slag, or flue  
4 gas desulfurization materials, which are beneficially used, including use for  
5 structural fill.
- 6 (5) "Coal combustion residuals" has the same meaning as defined in  
7 G.S. 130A-290.
- 8 (6) "Coal combustion residuals surface impoundment" means a topographic  
9 depression, excavation, or diked area that is: (i) primarily formed from  
10 earthen materials; (ii) without a base liner approved for use by Article 9 of  
11 Chapter 130A of the General Statutes or rules adopted thereunder for a  
12 combustion products landfill or coal combustion residuals landfill, industrial  
13 landfill, or municipal solid waste landfill; and (iii) designed to hold  
14 accumulated coal combustion residuals in the form of liquid wastes, wastes  
15 containing free liquids, or sludges, and that is not backfilled or otherwise  
16 covered during periods of deposition. "Coal combustion residuals surface  
17 impoundment" shall only include impoundments owned by a public utility,  
18 as defined in G.S. 62-3. "Coal combustion residuals surface impoundment"  
19 includes all of the following:
- 20 a. An impoundment that is dry due to the deposited liquid having  
21 evaporated, volatilized, or leached.
- 22 b. An impoundment that is wet with exposed liquid.
- 23 c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and  
24 sludge pits, when these structures are designed to hold accumulated  
25 coal combustion residuals.
- 26 d. A coal combustion residuals surface impoundment that has been  
27 covered with soil or other material after the final deposition of coal  
28 combustion residuals at the impoundment.
- 29 (7) "Commission" means the Environmental Management Commission.
- 30 (8) "Fly ash" means the very fine, powdery material, composed mostly of silica  
31 with nearly all particles spherical in shape, which is a product of burning  
32 finely ground coal in a boiler to produce electricity and is removed from the  
33 plant exhaust gases by air emission control devices.
- 34 (9) "Flue gas desulfurization material" means the material produced through a  
35 process used to reduce sulfur dioxide emissions from the exhaust gas system  
36 of a coal-fired boiler. The physical nature of these materials varies from a  
37 wet sludge to a dry powdered material, depending on the process, and their  
38 composition comprises either sulfites, sulfates, or a mixture thereof.
- 39 (10) "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other  
40 solid material or substance of commercial value found in natural deposits on  
41 or in the earth.
- 42 (11) "Open pit mine" means an excavation made at the surface of the ground for  
43 the purpose of extracting minerals, inorganic and organic, from their natural  
44 deposits, which excavation is open to the surface.
- 45 (12) "Owner" or "owner of a coal combustion residuals surface impoundment"  
46 means a public utility, as defined in G.S. 62-3, that owns a coal combustion  
47 residuals surface impoundment.
- 48 (13) "Receptor" means any human, plant, animal, or structure which is, or has the  
49 potential to be, affected by the release or migration of contaminants. Any  
50 well constructed for the purpose of monitoring groundwater and contaminant  
51 concentrations shall not be considered a receptor.

1           (14) "Structural fill" means an engineered fill with a projected beneficial end use  
2 constructed using coal combustion products that are properly placed and  
3 compacted. For purposes of this Part, the term includes fill used to reclaim  
4 open pit mines and for embankments, greenscapes, foundations, construction  
5 foundations, and for bases/sub-bases under a structure or a footprint of a  
6 paved road, parking lot, sidewalk, walkway, or similar structure.

7           (15) "Use or reuse of coal combustion products" means the procedure whereby  
8 coal combustion products are directly used as either of the following:

9           a. As an ingredient in an industrial process to make a product, unless  
10 distinct components of the coal combustion products are recovered as  
11 separate end products.

12           b. In a function or application as an effective substitute for a  
13 commercial product or natural resource.

14 **"§ 130A-309.202. Coal Ash Management Commission.**

15           (a) Creation. – In recognition of the complexity and magnitude of the issues associated  
16 with the management of coal combustion residuals and the proper closure and remediation of  
17 coal combustion residuals surface impoundments, the Coal Ash Management Commission is  
18 hereby established.

19           (b) Membership. – The Commission shall consist of nine members as follows:

20           (1) One appointed by the General Assembly upon recommendation of the  
21 President Pro Tempore of the Senate in accordance with G.S. 120-121 who  
22 shall at the time of appointment be a resident of the State.

23           (2) One appointed by the General Assembly upon recommendation of the  
24 President Pro Tempore of the Senate in accordance with G.S. 120-121 who  
25 shall at the time of appointment have special training or scientific expertise  
26 in waste management, including solid waste disposal, hauling, or beneficial  
27 use.

28           (3) One appointed by the General Assembly upon recommendation of the  
29 President Pro Tempore of the Senate in accordance with G.S. 120-121 who  
30 shall at the time of appointment be a licensed physician or a person with  
31 experience in public health.

32           (4) One appointed by the General Assembly upon recommendation of the  
33 Speaker of the House of Representatives in accordance with G.S. 120-121  
34 who shall at the time of appointment be a member of a nongovernmental  
35 conservation interest.

36           (5) One appointed by the General Assembly upon recommendation of the  
37 Speaker of the House of Representatives in accordance with G.S. 120-121  
38 who shall at the time of appointment be actively employed by, or recently  
39 retired from, an industrial manufacturing facility.

40           (6) One appointed by the General Assembly upon recommendation of the  
41 Speaker of the House of Representatives in accordance with G.S. 120-121  
42 who shall at the time of appointment have expertise in determining and  
43 evaluating the costs associated with electricity generation and establishing  
44 the rates associated with electricity consumption.

45           (7) One appointed by the Governor who shall at the time of appointment have  
46 experience in economic development.

47           (8) One appointed by the Governor who shall at the time of appointment be a  
48 representative of an electric membership corporation organized under Article  
49 2 of Chapter 117 of the General Statutes.

50           (9) One appointed by the Governor who shall at the time of appointment be a  
51 person with experience in science or engineering.

1       (c) Chair; Vice-Chair. – The Commission shall have a chair and a vice-chair. The  
2 Commission shall elect one of its members to serve as chair and one of its members to serve as  
3 vice-chair. The chair and vice-chair shall serve two-year terms.

4       (d) Vacancies. – Any appointment to fill a vacancy on the Commission created by the  
5 resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired  
6 term. The Governor may reappoint a gubernatorial appointee of the Commission to an  
7 additional term if, at the time of the reappointment, the member qualifies for membership on  
8 the Commission under subdivisions (7) through (9) of subsection (b) of this section.  
9 Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and  
10 vacancies in those appointments shall be filled in accordance with G.S. 120-122.

11       (e) Removal. – The Governor shall have the power to remove any member of the  
12 Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the  
13 provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

14       (f) Powers and Duties. – The Commission shall have all of the following powers and  
15 duties:

16           (1) To review and approve the classification of coal combustion residuals  
17 surface impoundments required by G.S. 130A-309.211.

18           (2) To review and approve Coal Combustion Residuals Surface Impoundment  
19 Closure Plans as provided in G.S. 130A-309.212.

20           (3) To review and make recommendations on the provisions of this Part and  
21 other statutes and rules related to the management of coal combustion  
22 residuals.

23           (4) To undertake any additional studies as requested by the General Assembly.

24       (g) Reimbursement. – The members of the Commission shall receive per diem and  
25 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

26       (h) Quorum. – Five members of the Commission shall constitute a quorum for the  
27 transaction of business.

28       (i) Staff. – The Commission is authorized and empowered to employ staff as the  
29 Commission may determine to be necessary for the proper discharge of the Commission's  
30 duties and responsibilities. The Chair of the Commission shall organize and direct the work of  
31 the Commission staff. The salaries and compensation of all such personnel shall be fixed in the  
32 manner provided by law for fixing and regulating salaries and compensation by other State  
33 agencies. The chair, within allowed budgetary limits and as allowed by law, shall authorize and  
34 approve travel, subsistence, and related expenses of such personnel incurred while traveling on  
35 official business. All State agencies, including the constituent institutions of The University of  
36 North Carolina, shall provide information and support to the Commission upon request.

37       (j) Conflicts of Interest; Disclosure. – The Governor shall require adequate disclosure  
38 of potential conflicts of interest by members. The Governor, by executive order, shall  
39 promulgate criteria regarding conflicts of interest and disclosure thereof for determining the  
40 eligibility of persons under this subsection, giving due regard to the requirements of federal  
41 legislation and, for this purpose, may promulgate rules, regulations, or guidelines in  
42 conformance with those established by any federal agency interpreting and applying provisions  
43 of federal law.

44       (k) Covered Persons. – All members of the Commission are covered persons for the  
45 purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As  
46 covered persons, members of the Commission shall comply with the applicable requirements of  
47 the State Government Ethics Act, including mandatory training, the public disclosure of  
48 economic interests, and ethical standards for covered persons. Members of the Commission  
49 shall comply with the provisions of the State Government Ethics Act to avoid conflicts of  
50 interest.

1        (l) Meetings. – The Commission shall meet at least once every two months and may  
2 hold special meetings at any time and place within the State at the call of the Chair or upon the  
3 written request of at least five members.

4        (m) Reports. – The Commission shall submit quarterly written reports as to its operation,  
5 activities, programs, and progress to the Environmental Review Commission. The Commission  
6 shall supplement the written reports required by this subsection with additional written and oral  
7 reports as may be requested by the Environmental Review Commission. The Commission shall  
8 submit the written reports required by this subsection whether or not the General Assembly is  
9 in session at the time the report is due.

10       (n) Administrative Location; Independence. – The Commission shall be  
11 administratively located in the Division of Emergency Management of the Department of  
12 Public Safety. The Commission shall exercise all of its powers and duties independently and  
13 shall not be subject to the supervision, direction, or control of the Division or Department.

14       (o) Terms of Members. – Members of the Commission shall serve terms of six years.

15 **"§ 130A-309.203. Expedited permit review.**

16       (a) The Department shall act as expeditiously as practicable, but no later than the  
17 deadlines established under subsection (b) of this section, except in compliance with subsection  
18 (c) of this section, to issue all permits necessary to conduct activities required by this Part.

19       (b) Notwithstanding G.S. 130A-295.8(e), the Department shall determine whether an  
20 application for any permit necessary to conduct activities required by this Part is complete  
21 within 30 days after the Department receives the application for the permit. A determination of  
22 completeness means that the application includes all required components but does not mean  
23 that the required components provide all of the information that is required for the Department  
24 to make a decision on the application. If the Department determines that an application is not  
25 complete, the Department shall notify the applicant of the components needed to complete the  
26 application. An applicant may submit additional information to the Department to cure the  
27 deficiencies in the application. The Department shall make a final determination as to whether  
28 the application is complete within the later of (i) 30 days after the Department receives the  
29 application for the permit less the number of days that the applicant uses to provide the  
30 additional information or (ii) 10 days after the Department receives the additional information  
31 from the applicant. The Department shall issue a draft permit decision on an application for a  
32 permit within 90 days after the Department determines that the application is complete. The  
33 Department shall hold a public hearing and accept written comment on the draft permit  
34 decision for a period of not less than 30 or more than 60 days after the Department issues a  
35 draft permit decision. The Department shall issue a final permit decision on an application for a  
36 permit within 60 days after the comment period on the draft permit decision closes. If the  
37 Department fails to act within any time period set out in this subsection, the applicant may treat  
38 the failure to act as a denial of the permit and may challenge the denial as provided in Chapter  
39 150B of the General Statutes.

40       (c) If the Department finds that compliance with the deadlines established under  
41 subsection (b) of this section would result in insufficient review of a permit application that  
42 would pose a risk to public health, safety, and welfare; the environment; or natural resources,  
43 the applicable deadline shall be waived for the application as necessary to allow for adequate  
44 review. If a deadline is waived pursuant to this subsection, the Secretary shall issue a written  
45 declaration, including findings of fact, documenting the need for the waiver.

46 **"§ 130A-309.204. Reports.**

47       (a) The Department shall submit quarterly written reports to the Environmental Review  
48 Commission and the Coal Ash Management Commission on its operations, activities,  
49 programs, and progress with respect to its obligations under this Part concerning all coal  
50 combustion residuals surface impoundments. At a minimum, the report shall include  
51 information concerning the status of assessment, corrective action, prioritization, and closure

1 for each coal combustion residual surface impoundment and information on costs connected  
2 therewith. The report shall include an executive summary of each annual Groundwater  
3 Protection and Restoration Report submitted to the Department by the operator of any coal  
4 combustion residuals surface impoundments pursuant to G.S. 130A-309.209(d) and a summary  
5 of all groundwater sampling, protection, and restoration activities related to the impoundment  
6 for the preceding year. The report shall also include an executive summary of each annual  
7 Surface Water Protection and Restoration Report submitted to the Department by the operator  
8 of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.210(e) and  
9 a summary of all surface water sampling, protection, and restoration activities related to the  
10 impoundment for the preceding year, including the status of the identification, assessment, and  
11 correction of unpermitted discharges from coal combustion residuals surface impoundments to  
12 the surface waters of the State. The Department shall supplement the written reports required  
13 by this subsection with additional written and oral reports as may be requested by the  
14 Environmental Review Commission. The Department shall submit the written reports required  
15 by this subsection whether or not the General Assembly is in session at the time the report is  
16 due.

17 (b) On or before October 1 of each year, the Department shall report to each member of  
18 the General Assembly who has a coal combustion residuals surface impoundment in the  
19 member's district. This report shall include the location of each impoundment in the member's  
20 district, the amount of coal combustion residuals known or believed to be located in the  
21 impoundment, the last action taken at the impoundment, and the date of that last action.

22 (c) On or before October 1 of each year, a public utility generating coal combustion  
23 residuals and coal combustion products shall submit an annual summary to the Department.  
24 The annual summary shall be for the period July 1 through June 30 and shall include all of the  
25 following:

- 26 (1) The volume of coal combustion residuals and products produced.
- 27 (2) The volume of coal combustion residuals disposed.
- 28 (3) The volume of coal combustion products used in structural fill projects.
- 29 (4) The volume of coal combustion products beneficially used, other than for  
30 structural fill.

31 **"§ 130A-309.205. Local ordinances regulating management of coal combustion residuals**  
32 **and coal combustion products invalid; petition to preempt local ordinance.**

33 (a) It is the intent of the General Assembly to maintain a uniform system for the  
34 management of coal combustion residuals and coal combustion products, including matters of  
35 disposal and beneficial use, and to place limitations upon the exercise by all units of local  
36 government in North Carolina of the power to regulate the management of coal combustion  
37 residuals and coal combustion products by means of ordinances, property restrictions, zoning  
38 regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or  
39 other local authorities to adopt local ordinances, including those imposing taxes, fees, or  
40 charges or regulating health, environment, or land use, all provisions of local ordinances,  
41 including those regulating land use, adopted by counties, municipalities, or other local  
42 authorities that regulate or have the effect of regulating the management of coal combustion  
43 residuals and coal combustion products within the jurisdiction of a local government are  
44 invalidated, to the extent necessary to effectuate the purposes of this Part, that do the following:

- 45 (1) Place any restriction or condition not placed by this Part upon management  
46 of coal combustion residuals and coal combustion products within any  
47 county, city, or other political subdivision.
- 48 (2) Conflict or are in any manner inconsistent with the provisions of this Part.

49 (b) If a local zoning or land-use ordinance imposes requirements, restrictions, or  
50 conditions that are generally applicable to development, including, but not limited to, setback,  
51 buffer, and stormwater requirements, and coal combustion residuals and coal combustion

1 products would be regulated under the ordinance of general applicability, the operator of the  
2 proposed activities may petition the Environmental Management Commission to review the  
3 matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the  
4 procedures in subsection (c) of this section and shall determine whether or to what extent to  
5 preempt the local ordinance to allow for the management of coal combustion residuals and coal  
6 combustion products.

7 (c) When a petition described in subsection (b) of this section has been filed with the  
8 Environmental Management Commission, the Commission shall hold a public hearing to  
9 consider the petition. The public hearing shall be held in the affected locality within 60 days  
10 after receipt of the petition by the Commission. The Commission shall give notice of the public  
11 hearing by both of the following means:

12 (1) Publication in a newspaper or newspapers having general circulation in the  
13 county or counties where the activities are to be conducted, once a week for  
14 three consecutive weeks, the first notice appearing at least 30 days prior to  
15 the scheduled date of the hearing.

16 (2) First-class mail to persons who have requested notice. The Commission shall  
17 maintain a mailing list of persons who request notice in advance of the  
18 hearing pursuant to this section. Notice by mail shall be complete upon  
19 deposit of a copy of the notice in a postage-paid wrapper addressed to the  
20 person to be notified at the address that appears on the mailing list  
21 maintained by the Commission in a post office or official depository under  
22 the exclusive care and custody of the United States Postal Service.

23 (d) Any interested person may appear before the Environmental Management  
24 Commission at the hearing to offer testimony. In addition to testimony before the Commission,  
25 any interested person may submit written evidence to the Commission for the Commission's  
26 consideration. At least 20 days shall be allowed for receipt of written comment following the  
27 hearing.

28 (e) A local zoning or land-use ordinance is presumed to be valid and enforceable to the  
29 extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that  
30 are generally applicable to development, including, but not limited to, setback, buffer, and  
31 stormwater requirements, unless the Environmental Management Commission makes a finding  
32 of fact to the contrary. The Commission shall determine whether or to what extent to preempt  
33 local ordinances so as to allow the project involving management of coal combustion residuals  
34 and coal combustion products no later than 60 days after conclusion of the hearing. The  
35 Commission shall preempt a local ordinance only if the Commission makes all of the following  
36 findings:

37 (1) That there is a local ordinance that would regulate the management of coal  
38 combustion residuals and coal combustion products.

39 (2) That all legally required State and federal permits or approvals have been  
40 issued by the appropriate State and federal agencies or that all State and  
41 federal permit requirements have been satisfied and that the permits or  
42 approvals have been denied or withheld only because of the local ordinance.

43 (3) That local citizens and elected officials have had adequate opportunity to  
44 participate in the permitting process.

45 (4) That the project involving management of coal combustion residuals and  
46 coal combustion products will not pose an unreasonable health or  
47 environmental risk to the surrounding locality and that the operator has taken  
48 or consented to take reasonable measures to avoid or manage foreseeable  
49 risks and to comply to the maximum feasible extent with applicable local  
50 ordinances.

1 (f) If the Environmental Management Commission does not make all of the findings  
2 under subsection (e) of this section, the Commission shall not preempt the challenged local  
3 ordinance. The Commission's decision shall be in writing and shall identify the evidence  
4 submitted to the Commission plus any additional evidence used in arriving at the decision.

5 (g) The decision of the Environmental Management Commission shall be final, unless a  
6 party to the action files a written appeal under Article 4 of Chapter 150B of the General  
7 Statutes, as modified by this section, within 30 days of the date of the decision. The record on  
8 appeal shall consist of all materials and information submitted to or considered by the  
9 Commission, the Commission's written decision, a complete transcript of the hearing, the  
10 specific findings required by subsection (e) of this section, and any minority positions on the  
11 specific findings required by subsection (e) of this section. The scope of judicial review shall be  
12 as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

13 (h) If the court reverses or modifies the decision of the Environmental Management  
14 Commission, the judge shall set out in writing, which writing shall become part of the record,  
15 the reasons for the reversal or modification.

16 (i) In computing any period of time prescribed or allowed by the procedure in this  
17 section, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

18 **"§ 130A-309.206. Federal preemption; severability.**

19 The provisions of this Part shall be severable, and if any phrase, clause, sentence, or  
20 provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law  
21 or regulation, the validity of the remainder of this Part shall not be affected thereby.

22 **"§ 130A-309.207. General rulemaking for Part.**

23 The Environmental Management Commission shall adopt rules as necessary to implement  
24 the provisions of the Part. Such rules shall be exempt from the requirements of G.S. 150B-19.3.

25 "Subpart 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments.

26 **"§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

27 (a) On or after July 1, 2014, the construction of new and expansion of existing coal  
28 combustion residuals surface impoundments is prohibited.

29 (b) On or after October 1, 2014, the disposal of coal combustion residuals into a coal  
30 combustion residuals surface impoundment at an electric generating facility where the  
31 coal-fired generating units are no longer producing coal combustion residuals is prohibited.

32 (c) On or after December 31, 2018, the discharge of stormwater into a coal combustion  
33 surface impoundment at an electric generating facility where the coal-fired generating units are  
34 no longer producing coal combustion residuals is prohibited.

35 (d) On or after December 31, 2019, the discharge of stormwater into a coal combustion  
36 surface impoundment at an electric generating facility where the coal-fired generating units are  
37 actively producing coal combustion residuals is prohibited.

38 (e) On or before December 31, 2018, all electric generating facilities owned by a public  
39 utility shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes  
40 of this subsection, the term "dry" shall mean coal combustion residuals which are not in the  
41 form of liquid wastes, wastes containing free liquids, or sludges.

42 (f) On or before December 31, 2019, all electric generating facilities owned by a public  
43 utility shall convert to the disposal of "dry" bottom ash or the facility shall be retired. For  
44 purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not  
45 in the form of liquid wastes, wastes containing free liquids, or sludges.

46 **"§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply**  
47 **well survey and provision of alternate water supply; reporting.**

48 (a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. –  
49 The owner of a coal combustion residuals surface impoundment shall conduct groundwater  
50 monitoring and assessment as provided in this subsection. The requirements for groundwater  
51 monitoring and assessment set out in this subsection are in addition to any other groundwater

1 monitoring and assessment requirements applicable to the owners of coal combustion residuals  
2 surface impoundments.

3 (1) No later than December 31, 2014, the owner of a coal combustion residuals  
4 surface impoundment shall submit a proposed Groundwater Assessment  
5 Plan for the impoundment to the Department for its review and approval.  
6 The Groundwater Assessment Plan shall, at a minimum, provide for all of  
7 the following:

- 8 a. A description of all receptors and significant exposure pathways.  
9 b. An assessment of the horizontal and vertical extent of soil and  
10 groundwater contamination for all contaminants confirmed to be  
11 present in groundwater in exceedance of groundwater quality  
12 standards.  
13 c. A description of all significant factors affecting movement and  
14 transport of contaminants.  
15 d. A description of the geological and hydrogeological features  
16 influencing the chemical and physical character of the contaminants.  
17 e. A schedule for continued groundwater monitoring.  
18 f. Any other information related to groundwater assessment required by  
19 the Department.

20 (2) The Department shall approve the Groundwater Assessment Plan if it  
21 determines that the Plan complies with the requirements of this subsection  
22 and will be sufficient to protect public health, safety, and welfare; the  
23 environment; and natural resources.

24 (3) No later than 10 days from approval of the Groundwater Assessment Plan,  
25 the owner shall begin implementation of the Plan.

26 (4) No later than 180 days from approval of the Groundwater Assessment Plan,  
27 the owner shall submit a Groundwater Assessment Report to the  
28 Department. The Report shall describe all exceedances of groundwater  
29 quality standards associated with the impoundment.

30 (b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a  
31 coal combustion residuals surface impoundment shall implement corrective action for the  
32 restoration of groundwater quality as provided in this subsection. The requirements for  
33 corrective action for the restoration of groundwater quality set out in this subsection are in  
34 addition to any other corrective action for the restoration of groundwater quality requirements  
35 applicable to the owners of coal combustion residuals surface impoundments.

36 (1) No later than 90 days from submission of the Groundwater Assessment  
37 Report required by subsection (a) of this section, the owner of the coal  
38 combustion residuals surface impoundment shall submit a proposed  
39 Groundwater Corrective Action Plan to the Department for its review and  
40 approval. The Groundwater Corrective Action Plan shall provide for the  
41 restoration of groundwater in conformance with the requirements of  
42 Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative  
43 Code. The Groundwater Corrective Action Plan shall include, at a minimum,  
44 all of the following:

- 45 a. A description of all exceedances of the groundwater quality  
46 standards, including any exceedances that the owner asserts are the  
47 result of natural background conditions.  
48 b. A description of the methods for restoring groundwater in  
49 conformance with the requirements of Subchapter L of Chapter 2 of  
50 Title 15A of the North Carolina Administrative Code and a detailed  
51 explanation of the reasons for selecting these methods.

- 1           c.     Specific plans, including engineering details, for restoring  
2                     groundwater quality.  
3           d.     A schedule for implementation of the Plan.  
4           e.     A monitoring plan for evaluating the effectiveness of the proposed  
5                     corrective action and detecting movement of any contaminant  
6                     plumes.  
7           f.     Any other information related to groundwater assessment required by  
8                     the Department.

9           (2)    The Department shall approve the Groundwater Corrective Action Plan if it  
10                   determines that the Plan complies with the requirements of this subsection  
11                   and will be sufficient to protect public health, safety, and welfare; the  
12                   environment; and natural resources.

13           (3)    No later than 30 days from the approval of the Groundwater Corrective  
14                   Action Plan, the owner shall begin implementation of the Plan in accordance  
15                   with the Plan's schedule.

16           (c)    Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No  
17                   later than October 1, 2014, the owner of a coal combustion residuals surface impoundment  
18                   shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply  
19                   wells within one-half mile down-gradient from the established compliance boundary of the  
20                   impoundment and submit the Survey to the Department. The Survey shall include well  
21                   locations, the nature of water uses, available well construction details, and information  
22                   regarding ownership of the wells. No later than December 1, 2014, the Department shall  
23                   determine, based on the Survey, which drinking water supply wells the owner is required to  
24                   sample and how frequently and for what period sampling is required. The Department shall  
25                   require sampling for drinking water supply wells where data regarding groundwater quality and  
26                   flow and depth in the area of any surveyed well provide a reasonable basis to predict that the  
27                   quality of water from the surveyed well may be adversely impacted by constituents associated  
28                   with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate  
29                   sampling and water quality analysis of the drinking water supply wells. A property owner may  
30                   elect to have an independent third party selected from a laboratory certified by the Department's  
31                   Wastewater/Groundwater Laboratory Certification program sample wells located on their  
32                   property in lieu of sampling conducted by the owner of the coal combustion residuals surface  
33                   impoundment. The owner of the coal combustion residuals surface impoundment shall pay for  
34                   the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude  
35                   or impair the right of any property owner to refuse such sampling of wells on their property. If  
36                   the sampling and water quality analysis indicates that water from a drinking water supply well  
37                   exceeds groundwater quality standards for constituents associated with the presence of the  
38                   impoundment, the owner shall replace the contaminated drinking water supply well with an  
39                   alternate supply of potable drinking water. The alternate supply of potable drinking water shall  
40                   be supplied within 30 days of the Department's determination that there is an exceedance of  
41                   groundwater quality standards attributable to constituents associated with the presence of the  
42                   impoundment. The requirement to replace a contaminated drinking water supply well with an  
43                   alternate supply of potable drinking water set out in this subsection is in addition to any other  
44                   requirements to replace a contaminated drinking water supply well with an alternate supply of  
45                   potable drinking water applicable to the owners of coal combustion residuals surface  
46                   impoundments.

47           (d)    Reporting. – In addition to any other reporting required by the Department, the  
48                   owner of a coal combustion residuals surface impoundment shall submit an annual  
49                   Groundwater Protection and Restoration Report to the Department no later than January 31 of  
50                   each year. The Report shall include a summary of all groundwater monitoring, protection, and  
51                   restoration activities related to the impoundment for the preceding year, including the status of

1 the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater  
2 Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any  
3 contaminated drinking water supply wells. The owner of a coal combustion residuals surface  
4 impoundment shall also submit all information required to be submitted to the Department  
5 pursuant to this section to the Coal Ash Management Commission.

6 **"§ 130A-309.210. Identification and assessment of discharges; correction of unpermitted**  
7 **discharges.**

8 (a) Identification of Discharges from Coal Combustion Residuals Surface  
9 Impoundments. –

10 (1) The owner of a coal combustion residuals surface impoundment shall  
11 identify all discharges from the impoundment as provided in this subsection.  
12 The requirements for identifying all discharges from an impoundment set out  
13 in this subsection are in addition to any other requirements for identifying  
14 discharges applicable to the owners of coal combustion residuals surface  
15 impoundments.

16 (2) No later than December 31, 2014, the owner of a coal combustion residuals  
17 surface impoundment shall submit a topographic map that identifies the  
18 location of all: (i) outfalls from engineered channels designed or improved  
19 for the purpose of collecting water from the toe of the impoundment and (ii)  
20 seeps and weeps discharging from the impoundment that are not captured by  
21 engineered channels designed or improved for the purpose of collecting  
22 water from the toe of the impoundment to the Department. The topographic  
23 map shall comply with all of the following:

- 24 a. Be at a scale as required by the Department.  
25 b. Specify the latitude and longitude of each toe drain outfall, seep, and  
26 weep.  
27 c. Specify whether the discharge from each toe drain outfall, seep, and  
28 weep is continuous or intermittent.  
29 d. Provide an average flow measurement of the discharge from each toe  
30 drain outfall, seep, and weep including a description of the method  
31 used to measure average flow.  
32 e. Specify whether the discharge from each toe drain outfall, seep, and  
33 weep identified reaches the surface waters of the State. If the  
34 discharge from a toe drain outfall, seep, or weep reaches the surface  
35 waters of the State, the map shall specify the latitude and longitude  
36 of where the discharge reaches the surface waters of the State.  
37 f. Any other information related to the topographic map required by the  
38 Department.

39 (b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments  
40 to the Surface Waters of the State. – The owner of a coal combustion residuals surface  
41 impoundment shall conduct an assessment of discharges from the coal combustion residuals  
42 surface impoundment to the surface waters of the State as provided in this subsection. The  
43 requirements for assessment of discharges from the coal combustion residuals surface  
44 impoundment to the surface waters of the State set out in this subsection are in addition to any  
45 other requirements for the assessment of discharges from coal combustion residuals surface  
46 impoundments to surface waters of the State applicable to the owners of coal combustion  
47 residuals surface impoundments.

48 (1) No later than December 31, 2014, the owner of a coal combustion residuals  
49 surface impoundment shall submit a proposed Discharge Assessment Plan to  
50 the Department. The Discharge Assessment Plan shall include information  
51 sufficient to allow the Department to determine whether any discharge,

1 including a discharge from a toe drain outfall, seep, or weep, has reached the  
2 surface waters of the State and has caused a violation of surface water  
3 quality standards. The Discharge Assessment Plan shall include, at a  
4 minimum, all of the following:

- 5 a. Upstream and downstream sampling locations within all channels  
6 that could potentially carry a discharge.  
7 b. A description of the surface water quality analyses that will be  
8 performed.  
9 c. A sampling schedule, including the frequency and duration of  
10 sampling activities.  
11 d. Reporting requirements.  
12 e. Any other information related to the assessment of discharges  
13 required by the Department.

14 (2) The Department shall approve the Discharge Assessment Plan if it  
15 determines that the Plan complies with the requirements of this subsection  
16 and will be sufficient to protect public health, safety, and welfare; the  
17 environment; and natural resources.

18 (3) No later than 30 days from the approval of the Discharge Assessment Plan,  
19 the owner shall begin implementation of the Plan in accordance with the  
20 Plan's schedule.

21 (c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion  
22 Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal  
23 combustion residuals surface impoundment shall implement corrective action to prevent  
24 unpermitted discharges from the coal combustion residuals surface impoundment to the surface  
25 waters of the State as provided in this subsection. The requirements for corrective action to  
26 prevent unpermitted discharges from coal combustion residuals surface impoundments to the  
27 surface waters of the State set out in this subsection are in addition to any other requirements  
28 for corrective action to prevent unpermitted discharges from coal combustion residuals surface  
29 impoundments to the surface waters of the State applicable to the owners of coal combustion  
30 residuals surface impoundments.

31 (1) If the Department determines, based on information provided pursuant to  
32 subsection (a) or (b) of this section, that an unpermitted discharge from a  
33 coal combustion residuals surface impoundment, including an unpermitted  
34 discharge from a toe drain outfall, seep, or weep, has reached the surface  
35 waters of the State, the Department shall notify the owner of the  
36 impoundment of its determination.

37 (2) No later than 30 days from a notification pursuant to subdivision (1) of this  
38 subsection, the owner of the coal combustion residuals surface impoundment  
39 shall submit a proposed Unpermitted Discharge Corrective Action Plan to  
40 the Department for its review and approval. The proposed Unpermitted  
41 Discharge Corrective Action Plan shall include, at a minimum, all of the  
42 following:

- 43 a. One of the following methods of proposed corrective action:  
44 1. Elimination of the unpermitted discharge.  
45 2. Application for a National Pollutant Discharge Elimination  
46 System (NPDES) permit amendment pursuant to  
47 G.S. 143-215.1 and Subchapter H of Chapter 2 of Title 15A  
48 of the North Carolina Administrative Code to bring the  
49 unpermitted discharge under permit regulations.  
50 b. A detailed explanation of the reasons for selecting the method of  
51 corrective action.

- 1           c.     Specific plans, including engineering details, to prevent the  
2                 unpermitted discharge.  
3           d.     A schedule for implementation of the Plan.  
4           e.     A monitoring plan for evaluating the effectiveness of the proposed  
5                 corrective action.  
6           f.     Any other information related to the correction of unpermitted  
7                 discharges required by the Department.

8           (3)    The Department shall approve the Unpermitted Discharge Corrective Action  
9                 Plan if it determines that the Plan complies with the requirements of this  
10                subsection and will be sufficient to protect public health, safety, and welfare;  
11                the environment; and natural resources.

12           (4)    No later than 30 days from the approval of the Unpermitted Discharge  
13                 Corrective Action Plan, the owner shall begin implementation of the Plan in  
14                 accordance with the Plan's schedule.

15           (d)    Identification of New Discharges. – No later than August 1, 2014, the owner of a  
16                 coal combustion residuals surface impoundment shall submit a proposed Plan for the  
17                 Identification of New Discharges to the Department for its review and approval as provided in  
18                 this subsection.

19                (1)    The proposed Plan for the Identification of New Discharges shall include, at  
20                 a minimum, all of the following:

21                   a.     A procedure for routine inspection of the coal combustion residuals  
22                         surface impoundment to identify indicators of potential new  
23                         discharges, including toe drain outfalls, seeps, and weeps.

24                   b.     A procedure for determining whether a new discharge is actually  
25                         present.

26                   c.     A procedure for notifying the Department when a new discharge is  
27                         confirmed.

28                   d.     Any other information related to the identification of new discharges  
29                         required by the Department.

30                (2)    The Department shall approve the Plan for the Identification of New  
31                 Discharges if it determines that the Plan complies with the requirements of  
32                 this subsection and will be sufficient to protect public health, safety, and  
33                 welfare; the environment; and natural resources.

34                (3)    No later than 30 days from the approval of the Plan for the Identification of  
35                 New Discharges, the owner shall begin implementation of the Plan in  
36                 accordance with the Plan.

37           (e)    Reporting. – In addition to any other reporting required by the Department, the  
38                 owner of a coal combustion residuals surface impoundment shall submit an annual Surface  
39                 Water Protection and Restoration Report to the Department no later than January 31 of each  
40                 year. The Report shall include a summary of all surface water sampling, protection, and  
41                 restoration activities related to the impoundment for the preceding year, including the status of  
42                 the identification, assessment, and correction of unpermitted discharges from coal combustion  
43                 residuals surface impoundments to the surface waters of the State. The owner of a coal  
44                 combustion residuals surface impoundment shall also submit all information required to be  
45                 submitted to the Department pursuant to this section to the Coal Ash Management  
46                 Commission.

47           **"§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**

48                (a)    As soon as practicable, but no later than August 1, 2015, the Department shall  
49                 develop proposed classifications for all coal combustion residuals surface impoundments,  
50                 including active and retired sites, for the purpose of closure and remediation based on these  
51                 sites' risks to public health, safety, and welfare; the environment; and natural resources and

1 shall determine a schedule for closure and required remediation that is based on the degree of  
2 risk to public health, safety, and welfare; the environment; and natural resources posed by the  
3 impoundments and that gives priority to the closure and required remediation of impoundments  
4 that pose the greatest risk. In assessing the risk, the Department shall evaluate information  
5 received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information  
6 deemed relevant and, at a minimum, consider all of the following:

- 7 (1) Any hazards to public health, safety, or welfare resulting from the  
8 impoundment.
- 9 (2) Structural condition and hazard potential of the impoundment.
- 10 (3) The proximity of surface waters to the impoundment and whether any  
11 surface waters are contaminated or threatened by contamination as a result  
12 of the impoundment.
- 13 (4) Information concerning the horizontal and vertical extent of soil and  
14 groundwater contamination for all contaminants confirmed to be present in  
15 groundwater in exceedance of groundwater quality standards and all  
16 significant factors affecting contaminant transport.
- 17 (5) The location and nature of all receptors and significant exposure pathways.
- 18 (6) The geological and hydrogeological features influencing the movement and  
19 chemical and physical character of the contaminants.
- 20 (7) Amount and characteristics of coal combustion residuals in the  
21 impoundment.
- 22 (8) Any other factor the Department deems relevant to establishment of risk.

23 (b) The Department shall issue a proposed classification for each coal combustion  
24 residuals surface impoundment based upon the assessment conducted pursuant to subsection (a)  
25 of this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed  
26 classification has been issued, the Department shall issue a written declaration, including  
27 findings of fact, documenting the proposed classification. The Department shall provide for  
28 public participation on the proposed risk classification as follows:

- 29 (1) The Department shall make copies of the written declaration issued pursuant  
30 to this subsection available for inspection as follows:
  - 31 a. A copy of the declaration shall be provided to the local health  
32 director.
  - 33 b. A copy of the declaration shall be provided to the public library  
34 located in closest proximity to the site in the county or counties in  
35 which the site is located.
  - 36 c. The Department shall post a copy of the declaration on the  
37 Department's Web site.
  - 38 d. The Department may place copies of the declaration in other  
39 locations so as to assure the availability thereof to the public.
- 40 (2) Before issuing a proposed classification of an impoundment as high-risk,  
41 intermediate-risk, or low-risk, the Department shall give notice of the written  
42 declaration issued pursuant to this subsection as follows:
  - 43 a. A notice and summary of the declaration shall be published weekly  
44 for a period of three consecutive weeks in a newspaper having  
45 general circulation in the county or counties where the site is located.
  - 46 b. Notice of the written declaration shall be given by first-class mail to  
47 persons who have requested such notice. Such notice shall include a  
48 summary of the written declaration and state the locations where a  
49 copy of the written declaration is available for inspection. The  
50 Department shall maintain a mailing list of persons who request  
51 notice pursuant to this section.

1           c.     Notice of the written declaration shall be given by electronic mail to  
2                 persons who have requested such notice. Such notice shall include a  
3                 summary of the written declaration and state the locations where a  
4                 copy of the written declaration is available for inspection. The  
5                 Department shall maintain a mailing list of persons who request  
6                 notice pursuant to this section.

7           (3)   No later than 60 days after issuance of the written declaration, the  
8                 Department shall conduct a public meeting in the county or counties in  
9                 which the site is located to explain the written declaration to the public. The  
10                Department shall give notice of the hearing at least 15 days prior to the date  
11                thereof by all of the following methods:

12           a.     Publication as provided in subdivision (1) of this subsection, with  
13                 first publication to occur not less than 30 days prior to the scheduled  
14                 date of the hearing.

15           b.     First-class mail to persons who have requested notice as provided in  
16                 subdivision (2) of this subsection.

17           c.     Electronic mail to persons who have requested notice as provided in  
18                 subdivision (2) of this subsection.

19           (4)   At least 30 days from the latest date on which notice is provided pursuant to  
20                 subdivision (2) of this subsection shall be allowed for the receipt of written  
21                 comment on the written declaration prior to issuance of a final risk  
22                 classification. At least 20 days will be allowed for receipt of written  
23                 comment following a hearing conducted pursuant to subdivision (3) of this  
24                 subsection prior to issuance of a final risk classification.

25           (c)   Within 30 days of the receipt of all written comment as required by subdivision (4)  
26                 of subsection (b) of this section, the Department shall submit a proposed classification for a  
27                 coal combustion residuals surface impoundment to the Coal Ash Management Commission  
28                 established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information  
29                 submitted in accordance with this Part related to the proposed classification and any other  
30                 information the Commission deems relevant. The Commission shall only approve the proposed  
31                 classification if it determines that the classification was developed in accordance with this  
32                 section and that the classification accurately reflects the level of risk posed by the coal  
33                 combustion residuals surface impoundment. The Commission shall issue its determination in  
34                 writing, including findings in support of its determination. If the Commission fails to act on a  
35                 proposed classification within 60 days of receipt of the proposed classification, the proposed  
36                 classification shall be deemed approved. Parties aggrieved by a final decision of the  
37                 Commission pursuant to this subsection may appeal the decision as provided under Article 4 of  
38                 Chapter 150B of the General Statutes.

39           "**§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**

40           (a)   An owner of a coal combustion residuals surface impoundment shall submit a  
41                 proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's  
42                 approval. If corrective action to restore groundwater has not been completed pursuant to the  
43                 requirements of G.S. 130A-309.209(b), the proposed closure plan shall include provisions for  
44                 completion of activities to restore groundwater in conformance with the requirements of  
45                 Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition,  
46                 the following requirements, at a minimum, shall apply to such plans:

47           (1)   High-risk impoundments shall be closed as soon as practicable, but no later  
48                 than December 31, 2019. A proposed closure plan for such impoundments  
49                 must be submitted as soon as practicable, but no later than December 31,  
50                 2016. At a minimum, such impoundments shall be dewatered, and the owner  
51                 of an impoundment shall either:

- 1           a.     Convert the coal combustion residuals impoundment to an industrial  
2           landfill by removing all coal combustion residuals and contaminated  
3           soil from the impoundment temporarily, safely storing the residuals  
4           on-site, and complying with the requirements for such landfills  
5           established by this Article and rules adopted thereunder. At a  
6           minimum, the landfills shall have a design with a leachate collection  
7           system, a closure cap system, and a composite liner system  
8           consisting of two components: the upper component shall consist of a  
9           minimum 30-ml flexible membrane (FML), and the lower  
10          components shall consist of at least a two-foot layer of compacted  
11          soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$ cm/sec.  
12          FML components consisting of high density polyethylene (HDPE)  
13          shall be at least 60-ml thick. The landfill shall otherwise comply with  
14          the construction requirements established by Section .1624 of  
15          Subchapter B of Chapter 13 of Title 15A of the North Carolina  
16          Administrative Code, and the siting and design requirements for  
17          disposal sites established by Section .0503 of Subchapter B of  
18          Chapter 13 of Title 15A of the North Carolina Administrative Code,  
19          except with respect to those requirements that pertain to buffers. In  
20          lieu of the buffer requirement established by Section .0503(f)(2)(iii)  
21          of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
22          Administrative Code, the owner of the impoundment shall establish  
23          and maintain a 300-foot buffer between surface waters and disposal  
24          areas. After the temporarily displaced coal combustion residuals have  
25          been returned for disposal in the industrial landfill constructed  
26          pursuant to the requirements of this sub-subdivision, the owner of the  
27          landfill shall comply with the closure and post-closure requirements  
28          established by Section .1627 of Subchapter B of Chapter 13 of Title  
29          15A of the North Carolina Administrative Code. A landfill  
30          constructed pursuant to this sub-subdivision shall otherwise be  
31          subject to all applicable requirements of this Chapter and rules  
32          adopted thereunder. Prior to closure, the Department may allow the  
33          disposal of coal combustion residuals, in addition to those originally  
34          contained in the impoundment, to the landfill constructed pursuant to  
35          this sub-subdivision, if the Department determines that the site is  
36          suitable for additional capacity and that disposal of additional coal  
37          combustion residuals will not pose an unacceptable risk to public  
38          health, safety, welfare; the environment; and natural resources.  
39          b.     Remove all coal combustion residuals from the impoundment, return  
40          the former impoundment to a nonerosive and stable condition, and (i)  
41          transfer the coal combustion residuals for disposal in a coal  
42          combustion residuals landfill, industrial landfill, or municipal solid  
43          waste landfill or (ii) use the coal combustion products in a structural  
44          fill or other beneficial use as allowed by law. The use of coal  
45          combustion products (i) as structural fill shall be conducted in  
46          accordance with the requirements of Subpart 3 of this Part and (ii) for  
47          other beneficial uses shall be conducted in accordance with the  
48          requirements of Section .1700 of Subchapter B of Chapter 13 of Title  
49          15A of the North Carolina Administrative Code (Requirements for  
50          Beneficial Use of Coal Combustion By-Products) and Section .1200

1 of Subchapter T of Chapter 2 of Title 15A of the North Carolina  
2 Administrative Code (Coal Combustion Products Management).

3 (2) Intermediate-risk impoundments shall be closed as soon as practicable, but  
4 no later than December 31, 2024. A proposed closure plan for such  
5 impoundments must be submitted as soon as practicable, but no later than  
6 December 31, 2017. At a minimum, such impoundments shall be dewatered,  
7 and the owner of an impoundment shall close the impoundment in any  
8 manner allowed pursuant to subdivision (1) of this subsection.

9 (3) Low-risk impoundments shall be closed as soon as practicable, but no later  
10 than December 31, 2029. A proposed closure plan for such impoundments  
11 must be submitted as soon as practicable, but no later than December 31,  
12 2018. Such impoundments shall be dewatered. The Department shall require  
13 such sites to comply with the closure and post-closure requirements  
14 established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of  
15 the North Carolina Administrative Code. Specifically, the owner of an  
16 impoundment shall install and maintain a cap system that is designed to  
17 minimize infiltration and erosion in conformance with the requirements of  
18 Section .1624 of Subchapter B of Chapter 13 of Title 15A of the North  
19 Carolina Administrative Code, and, at a minimum, shall be designed and  
20 constructed to: (i) have a permeability no greater than  $1 \times 10^{-5}$  cm/sec; (ii)  
21 minimize infiltration by the use of a low-permeability barrier that contains a  
22 minimum 18 inches of earthen material; and (iii) minimize erosion of the cap  
23 system and protect the low-permeability barrier from root penetration by use  
24 of an erosion layer that contains a minimum of six inches of earthen material  
25 that is capable of sustaining native plant growth. In addition, the owner of an  
26 impoundment shall: (i) install and maintain a leachate collection system; (ii)  
27 install and maintain a groundwater monitoring system; (iii) establish  
28 financial assurance that will ensure that sufficient funds are available for  
29 closure pursuant to this subdivision, post-closure maintenance and  
30 monitoring, any corrective action that the Department may require, and to  
31 satisfy any potential liability for sudden and nonsudden accidental  
32 occurrences arising from the impoundment, and subsequent costs incurred  
33 by the Department in response to an incident, even if the owner becomes  
34 insolvent or ceases to reside, be incorporated, do business, or maintain assets  
35 in the State; and (iv) conduct post-closure care for a period of 30 years,  
36 which period may be increased by the Department upon a determination that  
37 a longer period is necessary to protect public health, safety, welfare; the  
38 environment; and natural resources, or decreased upon a determination that a  
39 shorter period is sufficient to protect public health, safety, welfare; the  
40 environment; and natural resources. The Department may require  
41 implementation of any other measure it deems necessary to protect public  
42 health, safety, and welfare; the environment; and natural resources, including  
43 imposition of institutional controls that are sufficient to protect public health,  
44 safety, and welfare; the environment; and natural resources.

45 (4) Closure Plans for all impoundments shall include all of the following:

46 a. Facility and coal combustion residuals surface impoundment  
47 description. – A description of the operation of the site that shall  
48 include, at a minimum, all of the following:

49 1. Site history and history of site operations, including details on  
50 the manner in which coal combustion residuals have been  
51 stored and disposed of historically.

- 1                    2. Estimated volume of material contained in the impoundment.
- 2                    3. Analysis of the structural integrity of dikes or dams
- 3                    associated with impoundment.
- 4                    4. All sources of discharge into the impoundment, including
- 5                    volume and characteristics of each discharge.
- 6                    5. Whether the impoundment is lined, and, if so, the
- 7                    composition thereof.
- 8                    6. A summary of all information available concerning the
- 9                    impoundment as a result of inspections and monitoring
- 10                   conducted pursuant to this Part and otherwise available.
- 11                   b. Site maps, which, at a minimum, illustrate all of the following:
- 12                   1. All structures associated with the operation of any coal
- 13                   combustion residuals surface impoundment located on the
- 14                   site. For purposes of this sub-subdivision, the term "site" shall
- 15                   mean the land or waters within the property boundary of the
- 16                   applicable electric generating station.
- 17                   2. All current and former coal combustion residuals disposal and
- 18                   storage areas on the site, including details concerning coal
- 19                   combustion residuals produced historically by the electric
- 20                   generating station and disposed of through transfer to
- 21                   structural fills.
- 22                   3. The property boundary for the applicable site, including
- 23                   established compliance boundaries within the site.
- 24                   4. All potential receptors within 2,640 feet from established
- 25                   compliance boundaries.
- 26                   5. Topographic contour intervals of the site shall be selected to
- 27                   enable an accurate representation of site features and terrain
- 28                   and in most cases should be less than 20-foot intervals.
- 29                   6. Locations of all sanitary landfills permitted pursuant to this
- 30                   Article on the site, which are actively receiving waste or are
- 31                   closed, as well as the established compliance boundaries and
- 32                   components of associated groundwater and surface water
- 33                   monitoring systems.
- 34                   7. All existing and proposed groundwater monitoring wells
- 35                   associated with any coal combustion residuals surface
- 36                   impoundment on the site.
- 37                   8. All existing and proposed surface water sample collection
- 38                   locations associated with any coal combustion residuals
- 39                   surface impoundment on the site.
- 40                   c. The results of a hydrogeologic, geologic, and geotechnical
- 41                   investigation of the site, including, at a minimum, all of the
- 42                   following:
- 43                   1. A description of the hydrogeology and geology of the site.
- 44                   2. A description of the stratigraphy of the geologic units
- 45                   underlying each coal combustion residuals surface
- 46                   impoundment located on the site.
- 47                   3. The saturated hydraulic conductivity for (i) the coal
- 48                   combustion residuals within any coal combustion residuals
- 49                   surface impoundment located on the site and (ii) the saturated
- 50                   hydraulic conductivity of any existing liner installed at an
- 51                   impoundment, if any.



- 1 Chapter 2 of Title 15A of the North Carolina Administrative  
2 Code pre- and post-closure, including the effects on and from  
3 potential receptors.
- 4 3. A description of the groundwater trend analysis methods used  
5 to demonstrate compliance with groundwater quality  
6 standards for the substance established by Subchapter L of  
7 Chapter 2 of Title 15A of the North Carolina Administrative  
8 Code and requirements for corrective action of groundwater  
9 contamination established by Subchapter L of Chapter 2 of  
10 Title 15A of the North Carolina Administrative Code.
- 11 e. A description of any plans for beneficial use of the coal combustion  
12 residuals in compliance with the requirements of Section .1700 of  
13 Subchapter B of Chapter 13 of Title 15A of the North Carolina  
14 Administrative Code (Requirements for Beneficial Use of Coal  
15 Combustion By-Products) and Section .1200 of Subchapter T of  
16 Chapter 2 of Title 15A of the North Carolina Administrative Code  
17 (Coal Combustion Products Management).
- 18 f. All engineering drawings, schematics, and specifications for the  
19 proposed Closure Plan. If required by Chapter 89C of the General  
20 Statutes, engineering design documents should be prepared, signed,  
21 and sealed by a professional engineer.
- 22 g. A description of the construction quality assurance and quality  
23 control program to be implemented in conjunction with the Closure  
24 Plan, including the responsibilities and authorities for monitoring and  
25 testing activities, sampling strategies, and reporting requirements.
- 26 h. A description of the provisions for disposal of wastewater and  
27 management of stormwater and the plan for obtaining all required  
28 permits.
- 29 i. A description of the provisions for the final disposition of the coal  
30 combustion residuals. If the coal combustion residuals are to be  
31 removed, the owner must (i) identify the location and permit number  
32 for the coal combustion residuals landfills, industrial landfills, or  
33 municipal solid waste landfills in which the coal combustion  
34 residuals will be disposed and (ii) in the case where the coal  
35 combustion residuals are planned for beneficial use, the location and  
36 manner in which the residuals will be temporarily stored. If the coal  
37 combustion residuals are to be left in the impoundment, the owner  
38 must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of  
39 this section, provide a description of how the ash will be stabilized  
40 prior to completion of closure in accordance with closure and  
41 post-closure requirements established by Section .1627 of Subchapter  
42 B of Chapter 13 of Title 15A of the North Carolina Administrative  
43 Code and (ii) in the case of closure pursuant to sub-subdivision  
44 (a)(1)b. of this section, provide a description of how the ash will be  
45 stabilized pre- and post-closure. If the coal combustion residuals are  
46 to be left in the impoundment, the owner must provide an estimate of  
47 the volume of coal combustion residuals remaining.
- 48 j. A list of all permits that will need to be acquired or modified to  
49 complete closure activities.
- 50 k. A description of the plan for post-closure monitoring and care for an  
51 impoundment for a minimum of 30 years. The length of the

1 post-closure care period may be (i) proposed to be decreased or the  
2 frequency and parameter list modified if the owner demonstrates that  
3 the reduced period or modifications are sufficient to protect public  
4 health, safety, and welfare; the environment; and natural resources  
5 and (ii) increased by the Department at the end of the post-closure  
6 monitoring and care period if there are statistically significant  
7 increasing groundwater quality trends or if contaminant  
8 concentrations have not decreased to a level protective of public  
9 health, safety, and welfare; the environment; and natural resources. If  
10 the owner determines that the post-closure care monitoring and care  
11 period is no longer needed and the Department agrees, the owner  
12 shall provide a certification, signed and sealed by a professional  
13 engineer, verifying that post-closure monitoring and care has been  
14 completed in accordance with the post-closure plan. If required by  
15 Chapter 89C of the General Statutes, the proposed plan for  
16 post-closure monitoring and care should be signed and sealed by a  
17 professional engineer. The plan shall include, at a minimum, all of  
18 the following:

- 19 1. A demonstration of the long-term control of all leachate,  
20 affected groundwater, and stormwater.
- 21 2. A description of a groundwater monitoring program that  
22 includes (i) post-closure groundwater monitoring, including  
23 parameters to be sampled and sampling schedules; (ii) any  
24 additional monitoring well installations, including a map with  
25 the proposed locations and well construction details; and (iii)  
26 the actions proposed to mitigate statistically significant  
27 increasing groundwater quality trends.

- 28 l. An estimate of the milestone dates for all activities related to closure  
29 and post-closure.
- 30 m. Projected costs of assessment, corrective action, closure, and  
31 post-closure care for each coal combustion residual surface  
32 impoundment.
- 33 n. A description of the anticipated future use of the site and the  
34 necessity for the implementation of institutional controls following  
35 closure, including property use restrictions, and requirements for  
36 recordation of notices documenting the presence of contamination, if  
37 applicable, or historical site use.

38 (b) The Department shall review a proposed Coal Combustion Residuals Surface  
39 Impoundment Closure Plan for consistency with the minimum requirements set forth in  
40 subsection (a) of this section and whether the proposed Closure Plan is protective of public  
41 health, safety, and welfare; the environment; and natural resources and otherwise complies with  
42 the requirements of this Part. Prior to issuing a decision on a proposed Closure Plan, the  
43 Department shall provide for public participation on the proposed Closure Plan as follows:

- 44 (1) The Department shall make copies of the proposed Closure Plan available  
45 for inspection as follows:
  - 46 a. A copy of the proposed Closure Plan shall be provided to the local  
47 health director.
  - 48 b. A copy of the proposed Closure Plan shall be provided to the public  
49 library located in closest proximity to the site in the county or  
50 counties in which the site is located.

- 1           c.       The Department shall post a copy of the proposed Closure Plan on  
2                   the Department's Web site.
- 3           d.       The Department may place copies of the proposed Closure Plan in  
4                   other locations so as to assure the availability thereof to the public.
- 5       (2)   Before approving a proposed Closure Plan, the Department shall give notice  
6           as follows:
- 7           a.       A notice and summary of the proposed Closure Plan shall be  
8                   published weekly for a period of three consecutive weeks in a  
9                   newspaper having general circulation in the county or counties where  
10                  the site is located.
- 11          b.       Notice that a proposed Closure Plan has been developed shall be  
12                  given by first-class mail to persons who have requested such notice.  
13                  Such notice shall include a summary of the proposed Closure Plan  
14                  and state the locations where a copy of the proposed Closure Plan is  
15                  available for inspection. The Department shall maintain a mailing list  
16                  of persons who request notice pursuant to this section.
- 17          c.       Notice that a proposed Closure Plan has been developed shall be  
18                  given by electronic mail to persons who have requested such notice.  
19                  Such notice shall include a summary of the proposed Closure Plan  
20                  and state the locations where a copy of the proposed Closure Plan is  
21                  available for inspection. The Department shall maintain a mailing list  
22                  of persons who request notice pursuant to this section.
- 23       (3)   No later than 60 days after receipt of a proposed Closure Plan, the  
24           Department shall conduct a public meeting in the county or counties in  
25           which the site is located to explain the proposed Closure Plan and  
26           alternatives to the public. The Department shall give notice of the hearing at  
27           least 30 days prior to the date thereof by all of the following methods:
- 28           a.       Publication as provided in subdivision (1) of this subsection, with  
29                   first publication to occur not less than 30 days prior to the scheduled  
30                   date of the hearing.
- 31           b.       First-class mail to persons who have requested notice as provided in  
32                   subdivision (2) of this subsection.
- 33           c.       Electronic mail to persons who have requested notice as provided in  
34                   subdivision (2) of this subsection.
- 35       (4)   At least 30 days from the latest date on which notice is provided pursuant to  
36           subdivision (2) of this subsection shall be allowed for the receipt of written  
37           comment on the proposed Closure Plan prior to its approval. At least 20 days  
38           will be allowed for receipt of written comment following a hearing  
39           conducted pursuant to subdivision (3) of this subsection prior to the approval  
40           of the proposed Closure Plan.
- 41       (c)   The Department shall disapprove a proposed Coal Combustion Residuals Surface  
42           Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of  
43           public health, safety, and welfare; the environment; and natural resources and otherwise  
44           complies with the requirements of this Part. The Department shall provide specific findings to  
45           support its decision to approve or disapprove a proposed Closure Plan. If the Department  
46           disapproves a proposed Closure Plan, the person who submitted the Closure Plan may seek  
47           review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails  
48           to approve or disapprove a proposed Closure Plan within 120 days after a complete Closure  
49           Plan has been submitted, the person who submitted the proposed Closure Plan may treat the  
50           Closure Plan as having been disapproved at the end of that time period. The Department may

1 require a person who proposes a Closure Plan to supply any additional information necessary  
2 for the Department to approve or disapprove the Closure Plan.

3 (d) Within 30 days of its approval of a Coal Combustion Residuals Surface  
4 Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash  
5 Management Commission. The Commission shall evaluate all information submitted in  
6 accordance with this Part related to the Closure Plan and any other information the Commission  
7 deems relevant. The Commission shall only approve the Closure Plan if it determines that the  
8 Closure Plan was developed in accordance with this section; that implementation of the Closure  
9 Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits  
10 to public health, safety, and welfare; the environment; and natural resources outweigh the  
11 negative impacts on electricity costs and reliability. The Commission shall issue its  
12 determination in writing, including findings in support of its determination. If the Commission  
13 fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan  
14 shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to  
15 this subsection may appeal the decision as provided under Article 3 of Chapter 150B of the  
16 General Statutes.

17 (e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals  
18 Surface Impoundment Closure Plan has been approved by the Coal Ash Management  
19 Commission, the owner of the coal combustion residuals impoundment shall begin  
20 implementation of the approved plan. Modifications to an approved closure plan may only be  
21 allowed in conformance with the requirements of this Part, upon written request of an owner of  
22 an impoundment, with the written approval of the Department, and after public notice of the  
23 change in accordance with the requirements of subdivision (2) of subsection (b) of this section.  
24 Provided, however, minor technical modifications may be made in accordance with standard  
25 Department procedures for such minor modifications, and may be made without written  
26 approval of the Department, or public notice of the change.

27 (f) Nothing in this section shall be construed to obviate the need for sampling,  
28 remediation, and monitoring activities at the site as required by G.S. 130A-309.209 and  
29 G.S. 130A-309.310.

30 "Subpart 3. Use of Coal Combustion Products in Structural Fill.

31 **"§ 130A-309.213. Applicability.**

32 The provisions of this Subpart shall apply to the siting, design, construction, operation, and  
33 closure of projects that utilize coal combustion products for structural fill.

34 **"§ 130A-309.214. Permit requirements for projects using coal combustion products for**  
35 **structural fill.**

36 **(a) Permit Requirements. –**

37 **(1) Projects using coal combustion products as structural fill involving the**  
38 **placement of less than 10,000 tons of coal combustion products per acre or**  
39 **less than 100,000 tons of coal combustion products in total per project,**  
40 **which proceed in compliance with the requirements of this section and rules**  
41 **adopted thereunder, are deemed permitted. Any person proposing such a**  
42 **project shall submit an application for a permit to the Department upon such**  
43 **form as the Department may prescribe including, at a minimum, the**  
44 **information set forth in subdivision (1) of subsection (b) of this section.**

45 **(2) No person shall commence or operate a project using coal combustion**  
46 **residuals as structural fill involving the placement of 10,000 or more tons of**  
47 **coal combustion products per acre or 100,000 or more tons of coal**  
48 **combustion products in total per project without first receiving an individual**  
49 **permit from the Department. Any person proposing such a project shall**  
50 **submit an application for a permit to the Department upon such form as the**

1 Department may prescribe including, at a minimum, the information set  
2 forth in subdivisions (1) and (2) of subsection (b) of this section.

3 (b) Information to Be Provided to the Department. – At least 60 days before initiation  
4 of a proposed project using coal combustion products as structural fill, the person proposing the  
5 project shall submit all of the following information to the Department on a form as prescribed  
6 by the Department:

7 (1) For projects involving placement of less than 10,000 tons of coal combustion  
8 products per acre or less than 100,000 tons of coal combustion products in  
9 total per project, the person shall provide, at a minimum, the following  
10 information:

11 a. The description of the nature, purpose, and location of the project.

12 b. The estimated start and completion dates for the project.

13 c. An estimate of the volume of coal combustion products to be used in  
14 the project.

15 d. A Toxicity Characteristic Leaching Procedure analysis from a  
16 representative sample of each different coal combustion product's  
17 source to be used in the project for, at a minimum, all of the  
18 following constituents: arsenic, barium, cadmium, lead, chromium,  
19 mercury, selenium, and silver.

20 e. A signed and dated statement by the owner of the land on which the  
21 structural fill is to be placed, acknowledging and consenting to the  
22 use of coal combustion products as structural fill on the property and  
23 agreeing to record the fill in accordance with the requirements of  
24 G.S. 130A-390.218.

25 f. The name, address, and contact information for the generator of the  
26 coal combustion products.

27 g. Physical location of the project at which the coal combustion  
28 products were generated.

29 (2) For projects involving placement of 10,000 or more tons of coal combustion  
30 products per acre or 100,000 or more tons of coal combustion products in  
31 total per project, the person shall provide all information required pursuant  
32 to subdivision (1) of this subsection and shall provide construction plans for  
33 the project, including a stability analysis as the Department may require. If  
34 required by the Department, a stability analysis shall be prepared, signed,  
35 and sealed by a professional engineer in accordance with sound engineering  
36 practices. A construction plan shall, at a minimum, include a groundwater  
37 monitoring system and an encapsulation liner system in compliance with the  
38 requirements of G.S. 130A-309.215.

39 **"§ 130A-309.215. Design, construction, and siting requirements for projects using coal**  
40 **combustion products for structural fill.**

41 (a) Design, Construction, and Operation of Structural Fill Sites. –

42 (1) A structural fill site must be designed, constructed, operated, closed, and  
43 maintained in such a manner as to minimize the potential for harmful release  
44 of constituents of coal combustion residuals to the environment or create a  
45 nuisance to the public.

46 (2) Coal combustion products shall be collected and transported in a manner that  
47 will prevent nuisances and hazards to public health and safety. Coal  
48 combustion products shall be moisture conditioned, as necessary, and  
49 transported in covered trucks to prevent dusting.

50 (3) Coal combustion products shall be placed uniformly and shall be compacted  
51 to standards, including in situ density, compaction effort, and relative

- 1 density, specified by a registered professional engineer for a specific end-use  
2 purpose.
- 3 (4) Equipment shall be provided which is capable of placing and compacting the  
4 coal combustion products and handling the earthwork required during the  
5 periods that coal combustion products are received at the fill project.
- 6 (5) The coal combustion product structural fill project shall be effectively  
7 maintained and operated as a nondischarge system to prevent discharge to  
8 surface water resulting from the project.
- 9 (6) The coal combustion product structural fill project shall be effectively  
10 maintained and operated to ensure no violations of groundwater standards  
11 adopted by the Commission pursuant to Article 21 of Chapter 143 of the  
12 General Statutes due to the project.
- 13 (7) Surface waters resulting from precipitation shall be diverted away from the  
14 active coal combustion product placement area during filling and  
15 construction activity.
- 16 (8) Site development shall comply with the North Carolina Sedimentation  
17 Pollution Control Act of 1973, as amended.
- 18 (9) The structural fill project shall be operated with sufficient dust control  
19 measures to minimize airborne emissions and to prevent dust from creating a  
20 nuisance or safety hazard and shall not violate applicable air quality  
21 regulations.
- 22 (10) Coal combustion products utilized on an exterior slope of a structural fill  
23 shall not be placed with a slope greater than 3.0 horizontal to 1.0 vertical.
- 24 (11) Compliance with this subsection shall not insulate any of the owners or  
25 operators of a structural fill project from claims for damages to surface  
26 waters, groundwater, or air resulting from the operation of the structural fill  
27 project. If the project fails to comply with the requirements of this section,  
28 the constructor, generator, owner, or operator shall notify the Department  
29 and shall take any immediate corrective action as may be required by the  
30 Department.
- 31 (b) Liners, Leachate Collection System, Cap, and Groundwater Monitoring System  
32 Required for Large Structural Fills. – For projects involving placement of 10,000 or more tons  
33 of coal combustion products per acre or 100,000 or more tons of coal combustion products in  
34 total per project shall have an encapsulation liner system. The encapsulation liner system shall  
35 be constructed on and around the structural fill and shall be designed to efficiently contain,  
36 collect, and remove leachate generated by the coal combustion products, as well as separate the  
37 coal combustion products from any exposure to surrounding environs. At a minimum, the  
38 components of the liner system shall consist of the following:
- 39 (1) A base liner. The base liner shall consist of one of the following designs:
- 40 a. A composite liner utilizing a compacted clay liner. This composite  
41 liner is one liner that consists of two components: a geomembrane  
42 liner installed above and in direct and uniform contact with a  
43 compacted clay liner with a minimum thickness of 24 inches (0.61  
44 m) and a permeability of no more than  $1.0 \times 10^{-7}$  centimeters per  
45 second.
- 46 b. A composite liner utilizing a geosynthetic clay liner. This composite  
47 liner is one liner that consists of three components: a geomembrane  
48 liner installed above and in uniform contact with a geosynthetic clay  
49 liner overlying a compacted clay liner with a minimum thickness of  
50 18 inches (0.46 m) and a permeability of no more than  $1.0 \times 10^{-5}$   
51 centimeters per second.

- 1           (2)    A leachate collection system, which is constructed directly above the base  
2           liner and shall be designed to effectively collect and remove leachate from  
3           the project.
- 4           (3)    A cap system that is designed to minimize infiltration and erosion as  
5           follows:
- 6           a.     The cap system shall be designed and constructed to (i) have a  
7           permeability less than or equal to the permeability of any base liner  
8           system or the in situ subsoils underlying the structural fill, or the  
9           permeability specified for the final cover in the effective permit, or a  
10          permeability no greater than 1 x 10<sup>-5</sup> cm/sec, whichever is less; (ii)  
11          minimize infiltration through the closed structural fill by the use of a  
12          low-permeability barrier that contains a minimum 18 inches of  
13          earthen material; and (iii) minimize erosion of the cap system and  
14          protect the low-permeability barrier from root penetration by use of  
15          an erosion layer that contains a minimum of six inches of earthen  
16          material that is capable of sustaining native plant growth.
- 17          b.     The Department may approve an alternative cap system if the owner  
18          or operator can adequately demonstrate (i) the alternative cap system  
19          will achieve an equivalent or greater reduction in infiltration as the  
20          low-permeability barrier specified in sub-subdivision a. of this  
21          subdivision and (ii) the erosion layer will provide equivalent or  
22          improved protection as the erosion layer specified in sub-subdivision  
23          a. of this subdivision.
- 24          (4)    A groundwater monitoring system, which shall be approved by the  
25          Department and, at a minimum, consist of all of the following:
- 26          a.     A sufficient number of wells, installed at appropriate locations and  
27          depths, to yield groundwater samples from the uppermost aquifer that  
28          represent the quality of groundwater passing the relevant point of  
29          compliance as approved by the Department. A downgradient  
30          monitoring system shall be installed at the relevant point of  
31          compliance so as to ensure detection of groundwater contamination  
32          in the uppermost aquifer.
- 33          b.     A proposed monitoring plan, which shall be certified by a licensed  
34          geologist or professional engineer to be effective in providing early  
35          detection of any release of hazardous constituents from any point in a  
36          structural fill or leachate surface impoundment to the uppermost  
37          aquifer, so as to be protective of public health, safety, and welfare;  
38          the environment; and natural resources.
- 39          c.     A groundwater monitoring program, which shall include consistent  
40          sampling and analysis procedures that are designed to ensure  
41          monitoring results that provide an accurate representation of  
42          groundwater quality at the background and downgradient wells.  
43          Monitoring shall be conducted through construction and the  
44          post-closure care period. The sampling procedures and frequency  
45          shall be protective of public health, safety, and welfare; the  
46          environment; and natural resources.
- 47          d.     A detection monitoring program for all Appendix I constituents. For  
48          purposes of this subdivision, the term "Appendix I" means Appendix  
49          I to 40 C.F.R. Part 258, "Appendix I Constituents for Detection  
50          Monitoring," including subsequent amendments and editions.

1                   e.     An assessment monitoring program and corrective action plan if one  
2                             or more of the constituents listed in Appendix I is detected in  
3                             exceedance of a groundwater protection standard.

4           (c)     Siting for Structural Fill Facilities. – Coal combustion products used as a structural  
5     fill shall not be placed:

6                   (1)     Within 100 horizontal feet of a wetland, unless, after consideration of the  
7                             chemical and physical impact on the wetland, the United States Army Corps  
8                             of Engineers issues a permit or waiver for the fill.

9                   (2)     Within 300 horizontal feet of the top of the bank of a perennial stream or  
10                            other surface water body.

11                   (3)     Within four feet of the seasonal high groundwater table.

12                   (4)     Within 500 horizontal feet of any source of drinking water, such as a well,  
13                            spring, or other groundwater source of drinking water.

14                   (5)     Within an area subject to a 100-year flood, unless it can be demonstrated to  
15                            the Department that the project will be protected from inundation, and  
16                            washout, and the flow of water is not restricted and the storage volume of  
17                            the floodplain will not be significantly reduced.

18                   (6)     Within 25 feet of a bedrock outcrop.

19                   (7)     Within 200 feet of any property boundary.

20     "**§ 130A-309.216. Financial assurance requirements for large projects using coal**  
21     **combustion products for structural fill.**

22           (a)     For projects involving placement of 10,000 or more tons of coal combustion  
23     products per acre or 100,000 or more tons of coal combustion products in total per project, the  
24     applicant for a permit or a permit holder to construct or operate a structural fill shall establish  
25     financial assurance that will ensure that sufficient funds are available for facility closure,  
26     post-closure maintenance and monitoring, any corrective action that the Department may  
27     require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences,  
28     and subsequent costs incurred by the Department in response to an incident at a structural fill  
29     project, even if the applicant or permit holder becomes insolvent or ceases to reside, be  
30     incorporated, do business, or maintain assets in the State.

31           (b)     To establish sufficient availability of funds under this section, the applicant for a  
32     permit or a permit holder may use insurance, financial tests, third-party guarantees by persons  
33     who can pass the financial test, guarantees by corporate parents who can pass the financial test,  
34     irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any  
35     combination of the foregoing shown to provide protection equivalent to the financial protection  
36     that would be provided by insurance if insurance were the only mechanism used.

37           (c)     The applicant for a permit or a permit holder, and any parent, subsidiary, or other  
38     affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or  
39     indirect interest in the applicant, permit holder, or parent shall be a guarantor of payment for  
40     closure, post-closure maintenance and monitoring, any corrective action that the Department  
41     may require, and to satisfy any potential liability for sudden and nonsudden accidental  
42     occurrences arising from the operation of the hazardous waste facility.

43           (d)     Assets used to meet the financial assurance requirements of this section shall be in a  
44     form that will allow the Department to readily access funds for the purposes set out in this  
45     section. Assets used to meet financial assurance requirements of this section shall not be  
46     accessible to the permit holder except as approved by the Department.

47           (e)     The Department may provide a copy of any filing that an applicant for a permit or a  
48     permit holder submits to the Department to meet the financial responsibility requirements under  
49     this section to the State Treasurer. The State Treasurer shall review the filing and provide the  
50     Department with a written opinion as to the adequacy of the filing to meet the purposes of this  
51     section, including any recommended changes.

1       (f) In order to continue to hold a permit for a structural fill, a permit holder must  
2 maintain financial responsibility as required by this Part and must provide any information  
3 requested by the Department to establish that the permit holder continues to maintain financial  
4 responsibility.

5       (g) An applicant for a permit or a permit holder shall satisfy the Department that the  
6 applicant or permit holder has met the financial responsibility requirements of this Part before  
7 the Department is required to otherwise review the application.

8 **"§ 130A-309.217. Closure of projects using coal combustion products for structural fill.**

9       (a) Closure of Structural Fill Projects. –

10       (1) No later than 30 working days or 60 calendar days, whichever is less, after  
11 coal combustion product placement has ceased, the final cover shall be  
12 applied over the coal combustion product placement area.

13       (2) The final surface of the structural fill shall be graded and provided with  
14 drainage systems that do all of the following:

15           a. Minimize erosion of cover materials.

16           b. Promote drainage of area precipitation, minimize infiltration, and  
17 prevent ponding of surface water on the structural fill.

18       (3) Other erosion control measures, such as temporary mulching, seeding, or silt  
19 barriers shall be installed to ensure no visible coal combustion product  
20 migration to adjacent properties until the beneficial end use of the project is  
21 realized.

22       (4) The constructor or operator shall submit a certification to the Department  
23 signed and sealed by a registered professional engineer or signed by the  
24 Secretary of the Department of Transportation or his designee certifying that  
25 all requirements of this Subpart have been met. The report shall be submitted  
26 within 30 days of application of the final cover.

27       (b) Additional Closure and Post-Closure Requirements for Large Structural Fill  
28 Projects. – For projects involving placement of 10,000 or more tons of coal combustion  
29 products per acre or 100,000 or more tons of coal combustion products in total per project, a  
30 constructor or operator shall conduct post-closure care. Post-closure care shall be conducted for  
31 30 years, which period may be increased by the Department upon a determination that a longer  
32 period is necessary to protect public health, safety, welfare; the environment; and natural  
33 resources, or decreased upon a determination that a shorter period is sufficient to protect public  
34 health, safety, welfare; the environment; and natural resources. Additional closure and  
35 post-closure requirements include, at a minimum, all of the following:

36       (1) Submit a written closure plan, which includes all of the following:

37           a. A description of the cap liner system and the methods and procedures  
38 used to install the cap that conforms to the requirement in  
39 G.S. 130A-309.215(b).

40           b. An estimate of the largest area of the structural fill project ever  
41 requiring the cap liner system at any time during the overall  
42 construction period that is consistent with the drawings prepared for  
43 the structural fill.

44           c. An estimate of the maximum inventory of coal combustion products  
45 ever on-site over the construction duration of the structural fill.

46           d. A schedule for completing all activities necessary to satisfy the  
47 closure criteria set forth in this section.

48       (2) Submit a written post-closure plan, which includes all of the following:

49           a. A description of the monitoring and maintenance activities required  
50 for the project and the frequency at which these activities must be  
51 performed.

- 1            b. The name, address, and telephone number of the person or office  
2            responsible for the project during the post-closure period.
- 3            c. A description of the planned uses of the property during the  
4            post-closure period. Post-closure use of the property must not disturb  
5            the integrity of the cap system, base liner system, or any other  
6            components of the containment system, or the function of the  
7            monitoring systems unless necessary to comply with the  
8            requirements of this subsection. The Department may approve  
9            disturbance if the constructor or operator demonstrates that  
10           disturbance of the cap system, base liner system, or other component  
11           of the containment system will not increase the potential threat to  
12           public health, safety, and welfare; the environment; and natural  
13           resources.
- 14           d. The cost estimate for post-closure activities required under this  
15           section.
- 16           (3) Maintain the integrity and effectiveness of any cap system, including  
17           repairing the system as necessary to correct the defects of settlement,  
18           subsidence, erosion, or other events and preventing run-on and runoff from  
19           eroding or otherwise damaging the cap system.
- 20           (4) Maintain and operate the leachate collection system. The Department may  
21           allow the constructor or operator to stop managing leachate upon a  
22           satisfactory demonstration that leachate from the project no longer poses a  
23           threat to human health and the environment.
- 24           (5) Monitor and maintain the groundwater monitoring system in accordance  
25           with G.S. 130A-309.215 and monitor the surface water in accordance with  
26           15A NCAC 13B .0602.
- 27           (c) Completion of Post-Closure Care. – Following completion of the post-closure care  
28           period, the constructor or operator shall submit a certification, signed by a registered  
29           professional engineer, to the Department, verifying that post-closure care has been completed  
30           in accordance with the post-closure plan, and include the certification in the operating record.

31           **"§ 130A-309.218. Recordation of projects using coal combustion products for structural**  
32           **fill.**

33           (a) The owner of land where coal combustion products have been used in volumes of  
34           more than 1,000 cubic yards shall file a statement of the volume and locations of the coal  
35           combustion residuals with the Register of Deeds in the county or counties where the property is  
36           located. The statement shall identify the parcel of land according to the complete legal  
37           description on the recorded deed, either by metes and bounds, or by reference to a recorded plat  
38           map. The statement shall be signed and acknowledged by the landowners in the form  
39           prescribed by G.S. 47-38 through G.S. 47-43.

40           (b) Recordation shall be required within 90 days after completion of a structural fill  
41           project using coal combustion residuals.

42           (c) The Register of Deeds, in accordance with G.S. 161-14, shall record the notarized  
43           statement and index it in the Grantor Index under the name of the owner of the land. The  
44           original notarized statement with the Register's seal and the date, book, and page number of  
45           recording shall be returned to the Department after recording.

46           (d) When property with more than 1,000 cubic yards of coal combustion products is  
47           sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer  
48           shall contain in the description section in no smaller type than used in the body of the deed or  
49           instrument a statement that coal combustion products have been used as structural fill material  
50           on the property.

51           **"§ 130A-309.219. Department of Transportation projects.**

1        The Department and the Department of Transportation may agree on specific design,  
2 construction, siting, operation, and closure criteria that may apply to the Department of  
3 Transportation structural fill projects.

4 **"§ 130A-309.220. Inventory and inspection of certain structural fill projects.**

5        No later than July 1, 2015, the Department shall prepare an inventory of all structural fill  
6 projects with a volume of 10,000 cubic yards or more. The Department shall update the  
7 structural fill project inventory at least annually. The Department shall inspect each structural  
8 fill project with a volume of 10,000 cubic yards or more at least annually to determine if the  
9 project or facility has been constructed and operated in compliance with 15A NCAC 13B  
10 .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products) and all  
11 other applicable laws.

12 **"§ 130A-309.221. Amendments required to rules.**

13        Requirements under existing rules governing the use of coal combustion products for  
14 structural fill that do not conflict with the provisions of this Subpart shall continue to apply to  
15 such projects. The Environmental Management Commission shall amend existing rules  
16 governing the use of coal combustion products for structural fill as necessary to implement the  
17 provisions of this Subpart. Such rules shall be exempt from the requirements of  
18 G.S. 150B-19.3."

19        **SECTION 3.(b)** Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as  
20 enacted by Section 3(a) of this act, and except as otherwise preempted by the requirements of  
21 federal law, the following coal combustion residuals surface impoundments shall be deemed  
22 high-priority, and, as soon as practicable, but no later than August 1, 2019, shall be closed in  
23 conformance with Section 3(c) of this act:

- 24        (1) Coal combustion residuals surface impoundments located at the Dan River  
25 Steam Station, owned and operated by Duke Energy Progress, and located in  
26 Rockingham County.
- 27        (2) Coal combustion residuals surface impoundments located at the Riverbend  
28 Steam Station, owned and operated by Duke Energy Carolinas, and located  
29 in Gaston County.
- 30        (3) Coal combustion residuals surface impoundments located at the Asheville  
31 Steam Electric Generating Plant, owned and operated by Duke Energy  
32 Progress, and located in Buncombe County.
- 33        (4) Coal combustion residuals surface impoundments located at the Sutton  
34 Plant, owned and operated by Duke Energy Progress, and located in New  
35 Hanover County.

36        **SECTION 3.(c)** The impoundments identified in subsection (b) of this section shall  
37 be closed as follows:

- 38        (1) The impoundments shall be dewatered.
- 39        (2) All coal combustion residuals shall be removed from the impoundments and  
40 transferred for (i) disposal in a coal combustion residuals landfill, industrial  
41 landfill, or municipal solid waste landfill or (ii) use in a structural fill or  
42 other beneficial use as allowed by law. Any disposal or use of coal  
43 combustion products pursuant to this section shall comply with the  
44 moratoriums enacted under Section 4(a) and Section 5(a) of this act and any  
45 extensions thereof. The use of coal combustion products (i) as structural fill,  
46 as authorized by Section 4(b) of this act, shall be conducted in accordance  
47 with the requirements of Subpart 3 of Part 2I of Article 9 of the General  
48 Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial  
49 uses shall be conducted in accordance with the requirements of Section  
50 .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina  
51 Administrative Code (Requirements for Beneficial Use of Coal Combustion

1 By-Products) and Section .1200 of Subchapter T of Chapter 2 of Title 15A  
2 of the North Carolina Administrative Code (Coal Combustion Products  
3 Management), as applicable.

- 4 (3) Where groundwater quality is degraded as a result of the impoundment,  
5 corrective action to restore groundwater quality shall be implemented by the  
6 owner or operator as provided in G.S. 130A-309.204.

7 **SECTION 3.(d)** G.S. 130A-290(a) reads as rewritten:

8 **"§ 130A-290. Definitions.**

9 (a) Unless a different meaning is required by the context, the following definitions shall  
10 apply throughout this Article:

11 ...

- 12 (2b) ~~"Combustion products"~~ "Coal combustion residuals" means residuals,  
13 including fly ash, bottom ash, boiler slag, mill rejects, and flue gas  
14 desulfurization residue produced by a coal-fired generating ~~unit.~~ unit destined  
15 for disposal. The term does not include coal combustion products as defined  
16 in G.S. 130A-309.201(4).

- 17 (2c) ~~"Combustion products landfill"~~ "Coal combustion residuals landfill" means a  
18 facility or unit for the disposal of combustion products, where the landfill is  
19 located at the same facility with the coal-fired generating unit or units  
20 producing the combustion products, and where the landfill is located wholly  
21 or partly on top of a facility that is, or was, being used for the disposal or  
22 storage of such combustion products, including, but not limited to, landfills,  
23 wet and dry ash ponds, and structural fill facilities.

24 ...

- 25 (3a) "Commission" means the Environmental Management Commission.

26 ...

- 27 (20) "Open dump" means any facility or site where solid waste is disposed of that  
28 is not a sanitary landfill and that is not a coal combustion residuals surface  
29 impoundment or a facility for the disposal of hazardous waste.

30 ...

- 31 (35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or  
32 sludge from a waste treatment plant, water supply treatment plant or air  
33 pollution control facility, domestic sewage and sludges generated by the  
34 treatment thereof in sanitary sewage collection, treatment and disposal  
35 systems, and other material that is either discarded or is being accumulated,  
36 stored or treated prior to being discarded, or has served its original intended  
37 use and is generally discarded, including solid, liquid, semisolid or contained  
38 gaseous material resulting from industrial, institutional, commercial and  
39 agricultural operations, and from community activities. Notwithstanding  
40 sub-sub-subdivision b.3. of this subdivision, the term includes coal  
41 combustion residuals. The term does not include:

42 a. Fecal waste from fowls and animals other than humans.

43 b. Solid or dissolved material in:

- 44 1. Domestic sewage and sludges generated by treatment thereof  
45 in sanitary sewage collection, treatment and disposal systems  
46 which are designed to discharge effluents to the surface  
47 waters.  
48 2. Irrigation return flows.  
49 3. Wastewater discharges and the sludges incidental to and  
50 generated by treatment which are point sources subject to  
51 permits granted under Section 402 of the Water Pollution

1 Control Act, as amended (P.L. 92-500), and permits granted  
2 under G.S. 143-215.1 by the ~~Environmental Management~~  
3 ~~Commission—Commission, including coal combustion~~  
4 products. However, any sludges that meet the criteria for  
5 hazardous waste under RCRA shall also be a solid waste for  
6 the purposes of this Article.

7  
8 "...."

9 **SECTION 3.(e)** The initial members of the Coal Ash Management Commission  
10 established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act, whose  
11 qualifications are described in subdivisions (3), (4), and (9) of G.S. 130A-309.202(b), shall be  
12 appointed for an initial term of two years and subsequent appointments shall be for six-year  
13 terms. The initial members of the Coal Ash Management Commission established pursuant to  
14 G.S. 130A-309.202, as enacted by Section 3(a) of this act, whose qualifications are described in  
15 subdivisions (1), (6), and (8) of G.S. 130A-309.202(b), shall be appointed for an initial term of  
16 four years and subsequent appointments shall be for six-year terms. The initial members of the  
17 Coal Ash Management Commission established pursuant to G.S. 130A-309.202, as enacted by  
18 Section 3(a) of this act, whose qualifications are described in subdivisions (2), (5), and (7) of  
19 G.S. 130A-309.202(b), shall be appointed for an initial term of six years and subsequent  
20 appointments shall be for six-year terms.

21 **SECTION 3.(f)** This section is effective when it becomes law. G.S. 130A-309.202,  
22 as enacted by Section 3(a) of this act, is repealed June 30, 2030. Subpart 3 of Part 2I of Article  
23 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal  
24 combustion products as structural fill contracted for on or after that date. The first report due  
25 under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due October 1, 2014.  
26 Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this  
27 act, shall be appointed no later than September 1, 2014.

### 28 **PART III. MORATORIUMS AND STUDY ON (1) USE OF COAL COMBUSTION** 29 **PRODUCTS AS STRUCTURAL FILL AND (2) CONSTRUCTION OR EXPANSION** 30 **OF COMBUSTION PRODUCTS LANDFILLS**

31 **SECTION 4.(a)** Notwithstanding 15A NCAC 13B .1701, et seq., and except as  
32 provided in Section 4(b) of this act, the use of coal combustion products, as defined in  
33 G.S. 130A-309.201, as structural fill is prohibited until August 1, 2015, in order to allow the  
34 Department of Environment and Natural Resources, the Environmental Management  
35 Commission, and the General Assembly time to review and evaluate the use of coal  
36 combustion residuals as structural fill.

37 **SECTION 4.(b)** Coal combustion products may be used as structural fill for any of  
38 the following types of projects:

- 39 (1) A project where the structural fill is used with a base liner, leachate  
40 collection system, cap liner, groundwater monitoring system and where the  
41 constructor or operator establishes financial assurance, as required by  
42 G.S. 130A-309.216.
- 43 (2) As the base or sub-base of a concrete or asphalt paved road constructed  
44 under the authority of a public entity.

45 **SECTION 4.(c)** The use of coal combustion products (i) as structural fill as  
46 authorized by Section 4(b) of this act shall be conducted in accordance with the requirements of  
47 Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act,  
48 and (ii) for other beneficial uses shall be conducted in accordance with the requirements of  
49 Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative  
50 Code (Requirements for Beneficial Use of Coal Combustion By-Products) and Section .1200 of

1 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal  
2 Combustion Products Management), as applicable.

3 **SECTION 4.(d)** The Department of Environment and Natural Resources and the  
4 Environmental Management Commission shall jointly review Subpart 3 of Part 2I of Article 9  
5 of the General Statutes, as enacted by Section 3(a) of this act, and 15A NCAC 13B .1701, et  
6 seq. In conducting this review, the Department and Commission shall do all of the following:

- 7 (1) Review the uses of coal combustion products as structural fill and the  
8 regulation of this use under Subpart 3 of Part 2I of Article 9 of the General  
9 Statutes, as enacted by Section 3(a) of this act, to determine if the  
10 requirements are sufficient to protect public health, safety, and welfare; the  
11 environment; and natural resources.
- 12 (2) Review the uses of coal combustion products for other beneficial uses and  
13 the regulation of these uses under Section .1700 of Subchapter B of Chapter  
14 13 of Title 15A of the North Carolina Administrative Code (Requirements  
15 for Beneficial Use of Coal Combustion By-Products) and Section .1200 of  
16 Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative  
17 Code (Coal Combustion Products Management), and other applicable rules,  
18 to determine if the rules are sufficient to protect public health, safety, and  
19 welfare; the environment; and natural resources.
- 20 (3) Evaluate additional opportunities for the use of coal combustion products as  
21 structural fill and for other beneficial uses that would reduce the volume of  
22 coal combustion residuals that are being disposed of in coal combustion  
23 residuals landfills, industrial landfills, or municipal solid waste landfills  
24 while still being protective of public health, safety, and welfare; the  
25 environment; and natural resources.
- 26 (4) Monitor any actions of the United States Environmental Protection Agency  
27 regarding the use of coal combustion products as structural fill or for other  
28 beneficial uses.
- 29 (5) Jointly report to the Environmental Review Commission no later than  
30 January 15, 2015, on their findings and recommendations regarding the use  
31 of coal combustion products as structural fill and for other beneficial uses.

32 **SECTION 4.(e)** All electric generating facilities owned by a public utility that  
33 produce coal combustion residuals and coal combustion products shall issue a request for  
34 proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the  
35 concrete industry and other industries that might beneficially use coal combustion residuals and  
36 coal combustion products; (ii) the study of the feasibility and advisability of installation of  
37 technology to convert existing and newly generated coal combustion residuals to  
38 commercial-grade coal combustion products suitable for use in the concrete industry and other  
39 industries that might beneficially use coal combustion residuals; and (iii) an examination of all  
40 innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the  
41 impact of existing and newly generated coal combustion residuals. All electric generating  
42 facilities shall present the materials and information received in response to a request for  
43 proposals issued pursuant to this section and an assessment of the materials and information,  
44 including a forecast of specific actions to be taken in response to the materials and information  
45 received, to the Environmental Management Commission and the Coal Ash Management  
46 Commission on or before August 1, 2016.

47 **SECTION 4.(f)** This section is effective when it becomes law and applies to the  
48 use of coal combustion residuals as structural fill contracted for on or after that date.

49 **SECTION 5.(a)** There is hereby established a moratorium on construction of new  
50 or expansion of existing coal combustion residuals landfills, as defined by G.S. 130A-290(2c)  
51 and amended by Section 3(d) of this act. The purpose of this moratorium is to allow the State to

1 assess the risks to public health, safety, welfare; the environment; and natural resources of coal  
2 combustion residuals impoundments located beneath coal combustion residuals landfills to  
3 determine the advisability of continued operation of these landfills.

4 **SECTION 5.(b)** The Department of Environment and Natural Resources shall  
5 evaluate each coal combustion residuals landfill currently operating in the State, and, in  
6 particular, assess the risks to public health, safety, welfare; the environment; and natural  
7 resources, of coal combustion residuals surface impoundments located beneath coal  
8 combustion residuals landfills to determine the advisability of continued operation of these  
9 landfills. The Department shall report to the Environmental Review Commission no later than  
10 January 15, 2015, on its findings and recommendations concerning the risk assessment of each  
11 of these sites and the advisability of continued operation of coal combustion residuals landfills.

12 **SECTION 5.(c)** This section is effective when it becomes law and expires August  
13 1, 2015.

14  
15 **PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION**  
16 **REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO**  
17 **WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE**  
18 **RECORDED**

19 **SECTION 6.(a)** G.S. 143-215.1C reads as rewritten:

20 "**§ 143-215.1C. Report to wastewater system customers on system performance; report**  
21 **discharge of untreated wastewater to the Department; publication of notice of**  
22 **discharge of untreated wastewater and waste.**

23 (a) Report to Wastewater System Customers. – The owner or operator of any  
24 wastewater collection or treatment works, the operation of which is primarily to collect or treat  
25 municipal or domestic wastewater and for which a permit is issued under this Part and having  
26 an average annual flow greater than 200,000 gallons per day, shall provide to the users or  
27 customers of the collection system or treatment works and to the Department an annual report  
28 that summarizes the performance of the collection system or treatment works and the extent to  
29 which the collection system or treatment works has violated the permit or federal or State laws,  
30 regulations, or rules related to the protection of water quality. The report shall be prepared on  
31 either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of  
32 the calendar or fiscal year.

33 (a1) Report Discharge of Untreated Wastewater to the Department. – The owner or  
34 operator of any wastewater collection or treatment works for which a permit is issued under  
35 this Part shall report a discharge of 1,000 gallons or more of untreated wastewater to the  
36 surface waters of the State to the Department as soon as practicable but no later than 24 hours  
37 after the owner or operator has determined that the discharge has reached the surface waters of  
38 the State. This reporting requirement shall be in addition to any other reporting requirements  
39 applicable to the owner or operator of the wastewater collection or treatment works.

40 (b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or  
41 operator of any wastewater collection or treatment works, the operation of which is primarily to  
42 collect or treat municipal or domestic wastewater and for which a permit is issued under this  
43 Part shall:

- 44 (1) In the event of a discharge of 1,000 gallons or more of untreated wastewater  
45 to the surface waters of the State, issue a press release to all print and  
46 electronic news media that provide general coverage in the county where the  
47 discharge occurred setting out the details of the discharge. The owner or  
48 operator shall issue the press release within ~~48~~24 hours after the owner or  
49 operator has determined that the discharge has reached the surface waters of  
50 the State. The owner or operator shall retain a copy of the press release and a  
51 list of the news media to which it was distributed for at least one year after

1 the discharge and shall provide a copy of the press release and the list of the  
2 news media to which it was distributed to any person upon request.

- 3 (2) In the event of a discharge of 15,000 gallons or more of untreated  
4 wastewater to the surface waters of the State, publish a notice of the  
5 discharge in a newspaper having general circulation in the county in which  
6 the discharge occurs and in each county downstream from the point of  
7 discharge that is significantly affected by the discharge. The Secretary shall  
8 determine, at the Secretary's sole discretion, which counties are significantly  
9 affected by the discharge and shall approve the form and content of the  
10 notice and the newspapers in which the notice is to be published. The notice  
11 shall be captioned "NOTICE OF DISCHARGE OF UNTREATED  
12 SEWAGE". The owner or operator shall publish the notice within 10 days  
13 after the Secretary has determined the counties that are significantly affected  
14 by the discharge and approved the form and content of the notice and the  
15 newspapers in which the notice is to be published. The owner or operator  
16 shall file a copy of the notice and proof of publication with the Department  
17 within 30 days after the notice is published. Publication of a notice of  
18 discharge under this subdivision is in addition to the requirement to issue a  
19 press release under subdivision (1) of this subsection.

20 (c) Publication of Notice of Discharge of Untreated Waste. – The owner or operator of  
21 any wastewater collection or treatment works, other than a wastewater collection or treatment  
22 works the operation of which is primarily to collect or treat municipal or domestic wastewater,  
23 for which a permit is issued under this Part shall:

- 24 (1) In the event of a discharge of 1,000 gallons or more of untreated waste to the  
25 surface waters of the State, issue a press release to all print and electronic  
26 news media that provide general coverage in the county where the discharge  
27 occurred setting out the details of the discharge. The owner or operator shall  
28 issue the press release within ~~48~~24 hours after the owner or operator has  
29 determined that the discharge has reached the surface waters of the State.  
30 The owner or operator shall retain a copy of the press release and a list of the  
31 news media to which it was distributed for at least one year after the  
32 discharge and shall provide a copy of the press release and the list of the  
33 news media to which it was distributed to any person upon request.
- 34 (2) In the event of a discharge of 15,000 gallons or more of untreated waste to  
35 the surface waters of the State, publish a notice of the discharge in a  
36 newspaper having general circulation in the county in which the discharge  
37 occurs and in each county downstream from the point of discharge that is  
38 significantly affected by the discharge. The Secretary shall determine, at the  
39 Secretary's sole discretion, which counties are significantly affected by the  
40 discharge and shall approve the form and content of the notice and the  
41 newspapers in which the notice is to be published. The notice shall be  
42 captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The  
43 owner or operator shall publish the notice within 10 days after the Secretary  
44 has determined the counties that are significantly affected by the discharge  
45 and approved the form and content of the notice and the newspapers in  
46 which the notice is to be published. The owner or operator shall file a copy  
47 of the notice and proof of publication with the Department within 30 days  
48 after the notice is published. Publication of a notice of discharge under this  
49 subdivision is in addition to the requirement to issue a press release under  
50 subdivision (1) of this subsection."

51 **SECTION 6.(b)** Section 6(a) of this act becomes effective September 1, 2014.

1           **SECTION 6.(c)** G.S. 166A-19.12(16) reads as rewritten:

2           "(16) Establishing and operating a 24-hour Operations Center to serve as a single  
3           point of contact for local governments to report the occurrence of emergency  
4           and disaster events and to coordinate local and State response assets. The  
5           Division shall record all telephone calls to the 24-hour Operations Center  
6           emergency hotline and shall maintain the recording of each telephone call  
7           for at least one year."

8  
9           **PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY**  
10          **DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS;**  
11          **REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS**  
12          **SURFACE IMPOUNDMENTS**

13           **SECTION 7.** G.S. 143-215.27 reads as rewritten:

14          "**§ 143-215.27. Repair, alteration, or removal of dam.**

15           (a) Before commencing the repair, alteration or removal of a dam, application shall be  
16           made for written approval by the Department, except as otherwise provided by this Part. The  
17           application shall state the name and address of the applicant, shall adequately detail the changes  
18           it proposes to effect and shall be accompanied by maps, plans and specifications setting forth  
19           such details and dimensions as the Department requires. The Department may waive any such  
20           requirements. The application shall give such other information concerning the dam and  
21           reservoir required by the Department, such information concerning the safety of any change as  
22           it may require, and shall state the proposed time of commencement and completion of the  
23           work. When an application has been completed it may be referred by the Department for  
24           agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of  
25           original construction.

26           (b) When emergency repairs are necessary to safeguard life and property they may be  
27           started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and  
28           of the work ~~under way~~, and ~~they~~ underway as soon as possible, but not later than 24 hours after  
29           first knowledge of the necessity for the emergency repairs, and the emergency repairs shall be  
30           made to conform to its the Department's orders."

31           **SECTION 7.1** Part 3 of Article 21 of Chapter 143 of the General Statutes is  
32           amended by adding a new section to read:

33          "**§ 143-215.27A. Closure of coal combustion residuals surface impoundments to render**  
34          **such facilities exempt from the North Carolina Dam Safety Law of 1967.**

35           (a) Decommissioning Request. – The owner of a coal combustion residuals surface  
36           impoundment, as defined by G.S. 130A-309.201, that seeks to decommission the impoundment  
37           shall submit a Decommissioning Request to the Division of Energy, Mineral, and Land  
38           Resources of the Department requesting that the facility be decommissioned. The  
39           Decommissioning Request shall include, at a minimum, all of the following:

40           (1) A proposed geotechnical investigation plan scope of work. Upon preliminary  
41           plan approval pursuant to subsection (b) of this section, the owner shall  
42           proceed with necessary field work and submit a geotechnical report with site  
43           specific field data indicating that the containment dam and material  
44           impounded by the containment dam are stable, and that the impounded  
45           material is not subject to liquid flow behavior under expected static and  
46           dynamic loading conditions. Material testing should be performed along the  
47           full extent of the containment dam and in a pattern throughout the area of  
48           impounded material.

49           (2) A topographic map depicting existing conditions of the containment dam  
50           and impoundment area at two foot contour intervals or less.

1           (3) If the facility contains areas capable of impounding by topography, a breach  
2 plan must be included that ensures that there shall be no place within the  
3 facility capable of impounding. The breach plan shall include, at a minimum,  
4 proposed grading contours superimposed on the existing topographic map as  
5 well as necessary engineering calculations, construction details, and  
6 construction specifications.

7           (4) A permanent vegetation and stabilization or capping plan by synthetic liner  
8 or other means, if needed. These plans shall include at minimum, proposed  
9 grading contours superimposed on the existing topographic map where  
10 applicable as well as necessary engineering calculations, construction  
11 details, construction specifications, and all details for the establishment of  
12 surface area stabilization.

13           (5) A statement indicating that the impoundment facility has not received  
14 sluiced coal combustion residuals for at least three years and that there are  
15 no future plans to place coal combustion residuals in the facility by sluicing  
16 methods.

17       (b) Preliminary Review and Approval. – The Decommissioning Request shall undergo  
18 a preliminary review by the Division for completeness and approval of the proposed  
19 geotechnical investigation plan scope of work. The owner shall be notified by letter with results  
20 of the preliminary review including approval or revision requests relative to the proposed scope  
21 of work included in the geotechnical investigation plan. Upon receipt of a letter issued by the  
22 Division approving the preliminary geotechnical plan scope of work, the owner may proceed  
23 with field work and development of the geotechnical report.

24       (c) Final Determination and Approval. – Upon receipt of the geotechnical report, the  
25 Division shall complete the submittal review as provided in this subsection.

26           (1) If it is determined that sufficient evidence has been presented to clearly show  
27 that the facility no longer functions as a dam in its current state, a letter  
28 decommissioning the facility shall be issued by the Division and the facility  
29 shall no longer be under jurisdiction of the Dam Safety Law of 1967.

30           (2) If modifications such as breach construction or implementation of a  
31 permanent vegetation or surface lining plan are needed, such plans shall be  
32 reviewed per standard procedures for consideration of a letter of approval to  
33 modify or breach.

34           (3) If approved, such plans shall follow standard procedure for construction  
35 including construction supervision by a North Carolina registered  
36 professional engineer, as-built submittal by a North Carolina registered  
37 professional engineer, and follow up final inspection by the Division.

38           (4) Final approval shall be issued by the Division in the form of a letter  
39 decommissioning the facility and the facility shall no longer be under  
40 jurisdiction of the Dam Safety Law of 1967."

41       **SECTION 8.(a) G.S. 143-215.31 reads as rewritten:**

42       **"§ 143-215.31. Supervision over maintenance and operation of dams.**

43       (a) The Commission shall have jurisdiction and supervision over the maintenance and  
44 operation of dams to safeguard life and property and to satisfy minimum streamflow  
45 requirements. The Commission may adopt standards for the maintenance and operation of  
46 dams as may be necessary for the purposes of this Part. The Commission may vary the  
47 standards applicable to various dams, giving due consideration to the minimum flow  
48 requirements of the stream, the type and location of the structure, the hazards to which it may  
49 be exposed, and the peril of life and property in the event of failure of a dam to perform its  
50 function.

1        (a1) The owner of a dam classified by the Department as a high hazard dam or an  
2 intermediate hazard dam shall develop an Emergency Action Plan for the dam as provided in  
3 this subsection.

4            (1) The owner of the dam shall submit a proposed Emergency Action Plan for  
5 the dam within 90 days after the dam is classified as a high hazard dam or an  
6 intermediate hazard dam to the Department and the Department of Public  
7 Safety for their review and approval. The Department and the Department of  
8 Public Safety shall approve the Emergency Action Plan if they determine  
9 that it complies with the requirements of this subsection and will protect  
10 public health, safety, and welfare; the environment; and natural resources.

11           (2) The Emergency Action Plan shall include, at a minimum, all of the  
12 following:

13           a. A description of potential emergency conditions that could occur at  
14 the dam.

15           b. A description of actions to be taken in response to an emergency  
16 condition at the dam.

17           c. Emergency notification procedures to aid in warning and evacuations  
18 during an emergency condition at the dam.

19           d. A downstream inundation map depicting areas affected by a dam  
20 failure and sudden release of the impoundment.

21           (3) The owner of the dam shall update the Emergency Action Plan annually and  
22 shall submit it to the Department and the Department of Public Safety for  
23 their review and approval within one year of the prior approval.

24           (4) The Department shall provide a copy of the Emergency Action Plan to the  
25 regional offices of the Department that might respond to an emergency  
26 condition at the dam.

27           (5) The Department of Public Safety shall provide a copy of the Emergency  
28 Action Plan to all local emergency management agencies that might respond  
29 to an emergency condition at the dam.

30           (6) Information included in an Emergency Action Plan that constitutes sensitive  
31 public security information, as provided in G.S. 132-1.7, shall be maintained  
32 as confidential information and shall not be subject to disclosure under the  
33 Public Records Act. For purposes of this section, "sensitive public security  
34 information" shall include Critical Energy Infrastructure Information  
35 protected from disclosure under rules adopted by the Federal Energy  
36 Regulatory Commission in 18 C.F.R. § 333.112.

37        ...."

38           **SECTION 8.(b)** Notwithstanding G.S. 143-215.31, as amended by Section 8(a) of  
39 this act, the owners of all high hazard dams and intermediate hazard dams in operation on the  
40 effective date of this act shall submit their proposed Emergency Action Plans to the Department  
41 of Environment and Natural Resources and the Department of Public Safety no later than  
42 October 1, 2015.

43           **SECTION 9.** Section 3(b) of S.L. 2009-390 reads as rewritten:

44           **"SECTION 3.(b)** Any impoundments or other facilities that were in use ~~on the effective~~  
45 ~~date of this section~~ January 1, 2010, in connection with nonnuclear electric generating facilities  
46 under the jurisdiction of the North Carolina Utilities Commission, and that had been exempted  
47 under the provisions of G.S. 143-215.25A(4), prior to ~~amendment by Section 3(a) of this act,~~  
48 January 1, 2010, shall be deemed to have received all of the necessary approvals from the  
49 Department of Environment and Natural Resources and the ~~Commission for~~  
50 ~~Dam~~ Environmental Management Commission. ~~Safety, and shall not be required to submit~~

1 application, certificate, or other materials in connection with the continued normal operation  
2 and maintenance of those facilities."

3 **SECTION 10.** G.S. 143-215.32 reads as rewritten:

4 "**§ 143-215.32. Inspection of dams.**

5 (a) The Department may at any time inspect any dam, including a dam that is otherwise  
6 exempt from this Part, upon receipt of a written request of any affected person or agency, or  
7 upon a motion of the Environmental Management Commission. Within the limits of available  
8 funds the Department shall endeavor to provide for inspection of all dams at intervals of  
9 approximately five years.

10 (a1) Coal combustion residuals surface impoundments, as defined by  
11 G.S. 130A-309.201, shall be inspected as provided in this subsection.

12 (1) The Department shall inspect each dam associated with a coal combustion  
13 residuals surface impoundment at least annually.

14 (2) The owner of a coal combustion residuals surface impoundment shall inspect  
15 the impoundment weekly and after storms to detect evidence of any of the  
16 following conditions:

17 a. Deterioration, malfunction, or improper operation of spillway control  
18 systems.

19 b. Sudden drops in the level of the contents of the impoundment.

20 c. Severe erosion or other signs of deterioration in dikes or other  
21 containment devices or structures.

22 d. New or enlarged seeps along the downstream slope or toe of the dike  
23 or other containment devices or structures.

24 e. Any other abnormal conditions at the impoundment that could pose a  
25 risk to public health, safety, or welfare; the environment; or natural  
26 resources.

27 (3) If any of the conditions described in subdivision (2) of this subsection are  
28 observed, the owner shall provide documentation of the conditions to the  
29 Department and a registered professional engineer. The registered  
30 professional engineer shall investigate the conditions and, if necessary,  
31 develop a plan of corrective action to be implemented by the owner of the  
32 impoundment. The owner of the impoundment shall provide documentation  
33 of the completed corrective action to the Department.

34 (4) The owner of a coal combustion residuals surface impoundment shall  
35 provide for the annual inspection of the impoundment by an independent  
36 registered professional engineer to ensure that the structural integrity and the  
37 design, operation, and maintenance of the impoundment is in accordance  
38 with generally accepted engineering standards. Within 30 days of the  
39 inspection, the owner shall provide to the Department the inspection report  
40 and a certification by the engineer that the impoundment is structurally  
41 sound and that the design, operation, and maintenance of the impoundment  
42 is in accordance with generally accepted engineering standards. The owner  
43 and the Department shall each place the inspection report and certification  
44 on a publicly accessible Internet site.

45 (b) If the Department upon inspection finds that any dam is not sufficiently strong, is  
46 not maintained in good repair or operating condition, is dangerous to life or property, or does  
47 not satisfy minimum streamflow requirements, the Department shall present its findings to the  
48 Commission and the Commission may issue an order directing the owner or owners of the dam  
49 to make at his or her expense maintenance, alterations, repairs, reconstruction, change in  
50 construction or location, or removal as may be deemed necessary by the Commission within a  
51 time limited by the order, not less than 90 days from the date of issuance of each order, except

1 in the case of extreme danger to the safety of life or property, as provided by subsection (c) of  
2 this section.

3 (c) If at any time the condition of any dam becomes so dangerous to the safety of life or  
4 property, in the opinion of the Environmental Management Commission, as not to permit  
5 sufficient time for issuance of an order in the manner provided by subsection (b) of this section,  
6 the Environmental Management Commission may immediately take such measures as may be  
7 essential to provide emergency protection to life and property, including the lowering of the  
8 level of a reservoir by releasing water impounded or the destruction in whole or in part of the  
9 dam or reservoir. The Environmental Management Commission may recover the costs of such  
10 measures from the owner or owners by appropriate legal action.

11 (d) An order issued under this Part shall be served on the owner of the dam as provided  
12 in G.S. 1A-1, Rule 4."  
13

14 **PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM**  
15 **COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT**  
16 **COMMISSION**

17 **SECTION 11.(a)** G.S. 130A-29 reads as rewritten:

18 **"§ 130A-29. Commission for Public Health – Creation, powers and duties.**

19 ...

20 (c) The Commission shall adopt rules:

21 (1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

22 (2) Establishing standards for approving sewage-treatment devices and holding  
23 tanks for marine toilets as provided in G.S. 75A-6(o).

24 (3) Establishing specifications for sanitary privies for schools where  
25 water-carried sewage facilities are unavailable as provided in  
26 G.S. 115C-522.

27 (4) Establishing requirements for the sanitation of local confinement facilities as  
28 provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

29 (5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

30 (5a) Establishing eligibility standards for participation in Department  
31 reimbursement programs.

32 ~~(6) Requiring proper treatment and disposal of sewage and other waste from~~  
33 ~~chemical and portable toilets.~~

34 (7) Establishing statewide health outcome objectives and delivery standards.

35 (8) Establishing permit requirements for the sanitation of premises, utensils,  
36 equipment, and procedures to be used by a person engaged in tattooing, as  
37 provided in Part 11 of Article 8 of this Chapter.

38 (9) Implementing immunization requirements for adult care homes as provided  
39 in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

40 (10) Pertaining to the biological agents registry in accordance with  
41 G.S. 130A-479.

42 (11) For matters within its jurisdiction that allow for and regulate horizontal  
43 drilling and hydraulic fracturing for the purpose of oil and gas exploration  
44 and development.

45 ...."

46 **SECTION 11.(b)** G.S. 130A-291.1 reads as rewritten:

47 **"§ 130A-291.1. Septage management program; permit fees.**

48 ...

49 (d) Septage shall be treated and disposed only at a wastewater system that has been  
50 approved by the Department under rules adopted by the Commission ~~or by the Environmental~~  
51 ~~Management Commission~~ or at a site that is permitted by the Department under this section. A

1 permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the  
2 Commission.

3 ...."

4 **SECTION 11.(c)** G.S. 130A-294(a)(4) reads as rewritten:

5 **"§ 130A-294. Solid waste management program.**

6 (a) The Department is authorized and directed to engage in research, conduct  
7 investigations and surveys, make inspections and establish a statewide solid waste management  
8 program. In establishing a program, the Department shall have authority to:

9 ...

10 (4) a. Develop a permit system governing the establishment and operation  
11 of solid waste management facilities. A landfill with a disposal area  
12 of 1/2 acre or less for the on-site disposal of land clearing and inert  
13 debris is exempt from the permit requirement of this section and shall  
14 be governed by G.S. 130A-301.1. Demolition debris from the  
15 decommissioning of manufacturing buildings, including electric  
16 generating stations, that is disposed of on the same site as the  
17 decommissioned buildings, is exempt from the permit requirement of  
18 this section and rules adopted pursuant to this section and shall be  
19 governed by G.S. 130A-301.3. The Department shall not approve an  
20 application for a new permit, the renewal of a permit, or a substantial  
21 amendment to a permit for a sanitary landfill, excluding demolition  
22 landfills as defined in the rules of the Commission, except as  
23 provided in subdivisions (3) and (4) of subsection (b1) of this  
24 section. No permit shall be granted for a solid waste management  
25 facility having discharges that are point sources until the Department  
26 has referred the complete plans and specifications to the  
27 ~~Environmental Management~~ Commission and has received advice in  
28 writing that the plans and specifications are approved in accordance  
29 with the provisions of G.S. 143-215.1. In any case where the  
30 Department denies a permit for a solid waste management facility, it  
31 shall state in writing the reason for denial and shall also state its  
32 estimate of the changes in the applicant's proposed activities or plans  
33 that will be required for the applicant to obtain a permit.

34 b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1,  
35 2007.

36 c. The Department shall deny an application for a permit for a solid  
37 waste management facility if the Department finds that:

- 38 1. Construction or operation of the proposed facility would be  
39 inconsistent with or violate rules adopted by the Commission.
- 40 2. Construction or operation of the proposed facility would  
41 result in a violation of water quality standards adopted by the  
42 ~~Environmental Management~~ Commission pursuant to  
43 G.S. 143-214.1 for waters, as defined in G.S. 143-213.
- 44 3. Construction or operation of the facility would result in  
45 significant damage to ecological systems, natural resources,  
46 cultural sites, recreation areas, or historic sites of more than  
47 local significance. These areas include, but are not limited to,  
48 national or State parks or forests; wilderness areas; historic  
49 sites; recreation areas; segments of the natural and scenic  
50 rivers system; wildlife refuges, preserves, and management  
51 areas; areas that provide habitat for threatened or endangered

1 species; primary nursery areas and critical fisheries habitat  
2 designated by the Marine Fisheries Commission; and  
3 Outstanding Resource Waters designated by the  
4 ~~Environmental Management~~ Commission.

5 ...."

6 **SECTION 11.(d)** G.S. 130A-300 reads as rewritten:

7 **"§ 130A-300. Effect on laws applicable to water pollution control.**

8 This Article shall not be considered as amending, repealing or in any manner abridging or  
9 interfering with those sections of the General Statutes of North Carolina relative to the control  
10 of water pollution as now administered by the ~~Environmental Management~~ Commission nor  
11 shall the provisions of this Article be construed as being applicable to or in any way affecting  
12 the authority of the ~~Environmental Management~~ Commission to control the discharges of  
13 wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the  
14 General Statutes."

15 **SECTION 11.(e)** G.S. 130A-302 reads as rewritten:

16 **"§ 130A-302. Sludge deposits at sanitary landfills.**

17 Sludges generated by the treatment of wastewater discharges which are point sources  
18 subject to permits granted under Section 402 of the Federal Water Pollution Act, as amended  
19 (P.L. 92-500), or permits generated under G. S. 143-215.1 by the ~~Environmental Management~~  
20 Commission shall not be deposited in or on a sanitary landfill permitted under this Article  
21 unless in a compliance with the rules concerning solid waste adopted under this Article."

22 **SECTION 11.(f)** G.S. 130A-310.3 reads as rewritten:

23 **"§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste  
24 disposal sites.**

25 ...

26 (b) Where possible, the Secretary shall work cooperatively with any owner, operator,  
27 responsible party, or any appropriate agency of the State or federal government to develop and  
28 implement the inactive hazardous substance or waste disposal site remedial action program.  
29 The Secretary shall not take action under this section to the extent that the ~~Environmental~~  
30 ~~Management~~ Commission, the Commissioner of Agriculture, or the Pesticide Board has  
31 assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

32 ...

33 (d) In any inactive hazardous substance or waste disposal site remedial action program  
34 implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup  
35 standard as would be applied under CERCLA/SARA, and may seek federal approval of any  
36 such program to insure concurrent compliance with federal standards. State standards may  
37 exceed and be more comprehensive than such federal standards. The Secretary shall assure  
38 concurrent compliance with applicable standards set by the ~~Environmental Management~~  
39 Commission.

40 ...."

41 **SECTION 11.(g)** G.S. 130A-310.4(g) reads as rewritten:

42 "(g) The Commission ~~on Health Services~~ [~~Commission for Public Health~~] shall adopt  
43 rules prescribing the form and content of the notices required by this section. The proposed  
44 remedial action plan shall include a summary of all alternatives considered in the development  
45 of the plan. A record shall be maintained of all comment received by the Department regarding  
46 the remedial action plan."

47 **SECTION 11.(h)** G.S. 130A-310.31(b)(5) reads as rewritten:

48 "(5) "Unrestricted use standards" when used in connection with "cleanup",  
49 "remediated", or "remediation" means contaminant concentrations for each  
50 environmental medium that are considered acceptable for all uses and that  
51 comply with generally applicable standards, guidance, or established

1 methods governing the contaminants that are established by statute or  
2 adopted, published, or implemented by the ~~Environmental Management~~  
3 ~~Commission, the Commission, or the Department~~ instead of the site-specific  
4 contaminant levels established pursuant to this Part."

5 **SECTION 11.(i)** G.S. 130A-310.65 reads as rewritten:

6 **"§ 130A-310.65. Definitions.**

7 As used in this Part:

8 (1) "Background standard" means the naturally occurring concentration of a  
9 substance in the absence of the release of a contaminant.

10 ~~(2) "Commission" means the Environmental Management Commission created~~  
11 ~~pursuant to G.S. 143B-282.~~

12 ...  
13 (12) "Unrestricted use standards" means contaminant concentrations for each  
14 environmental medium that are acceptable for all uses; that are protective of  
15 public health, safety, and welfare and the environment; and that comply with  
16 generally applicable standards, guidance, or methods established by statute  
17 or adopted, published, or implemented by the ~~Commission, the Commission~~  
18 ~~for Public Health, Commission or the Department.~~"

19 **SECTION 11.(j)** G.S. 113-391(a)(5)f. reads as rewritten:

20 "f. Management of wastes produced in connection with oil and gas  
21 exploration and development and use of horizontal drilling and  
22 hydraulic fracturing treatments for that purpose. Such rules shall  
23 address storage, transportation, and disposal of wastes that may  
24 contain radioactive materials or wastes that may be toxic or have  
25 other hazardous wastes' characteristics that are not otherwise  
26 regulated as a hazardous waste by the federal Resource Conservation  
27 and Recovery Act (RCRA), such as top-hole water, brines, drilling  
28 fluids, additives, drilling muds, stimulation fluids, well servicing  
29 fluids, oil, production fluids, and drill cuttings from the drilling,  
30 alteration, production, plugging, or other activity associated with oil  
31 and gas wells. Wastes generated in connection with oil and gas  
32 exploration and development and use of horizontal drilling and  
33 hydraulic fracturing treatments for that purpose that constitute  
34 hazardous waste under RCRA shall be subject to rules adopted by the  
35 Environmental Management Commission ~~for Public Health~~ to  
36 implement RCRA requirements in the State."

37 **SECTION 11.(k)** G.S. 113-415 reads as rewritten:

38 **"§ 113-415. Conflicting laws.**

39 No provision of this Article shall be construed to repeal, amend, abridge or otherwise  
40 ~~affect: (i) affect~~ the authority and ~~responsibility~~responsibility (i) vested in the Environmental  
41 Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the  
42 location, construction, repair, operation and abandonment of ~~wells, or the authority and~~  
43 ~~responsibility~~ wells; (ii) vested in the Environmental Management Commission related to the  
44 control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the  
45 General Statutes; ~~or (ii) the authority or responsibility~~(iii) vested in the Department and the  
46 Environmental Management Commission for Public Health by Article 10 of Chapter 130A of  
47 the General Statutes pertaining to public water-supply ~~requirements, requirements;~~  
48 ~~authority and responsibility~~(iv) vested in the Environmental Management Commission for  
49 ~~Public Health~~ related to the management of solid and hazardous waste as provided in Article 9  
50 of Chapter 130A of the General Statutes."

1           **SECTION 11.(l)** The Revisor of Statutes shall make any conforming statutory  
2 changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter  
3 130A of the General Statutes from the Commission for Public Health to the Environmental  
4 Management Commission.

5           **SECTION 11.(m)** The Codifier of Rules shall make any conforming rule changes  
6 necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of  
7 the General Statutes from the Commission for Public Health to the Environmental Management  
8 Commission.

9  
10 **PART VII. AMEND COMPLIANCE BOUNDARY PROVISIONS**

11           **SECTION 12.(a)** G.S. 143-215.1 reads as rewritten:

12 **"§ 143-215.1. Control of sources of water pollution; permits required.**

13 ...

14       (i) Any person subject to the requirements of this section who is required to obtain an  
15 individual permit from the Commission for a disposal system under the authority of  
16 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as  
17 may be established by rule or permit for various categories of disposal systems and beyond  
18 which groundwater quality standards may not be exceeded. ~~The location of the compliance~~  
19 ~~boundary shall be established at the property boundary, except as otherwise established by the~~  
20 ~~Commission. Multiple contiguous properties under common ownership and permitted for use~~  
21 ~~as a disposal system shall be treated as a single property with regard to determination of a~~  
22 ~~compliance boundary under this subsection. boundary. Nothing in this subsection shall be~~  
23 ~~interpreted to require a revision to an existing compliance boundary previously approved by~~  
24 ~~rule or permit.~~

25       (j) ~~When operation of a disposal system permitted under this section results in an~~  
26 ~~exceedance of the groundwater quality standards adopted in accordance with G.S. 143-214.1,~~  
27 ~~the Commission shall require that the exceedances within the compliance boundary be~~  
28 ~~remedied through cleanup, recovery, containment, or other response only when any of the~~  
29 ~~following conditions occur:~~

30           (1) ~~A violation of any water quality standard in adjoining classified waters of~~  
31 ~~the State occurs or can be reasonably predicted to occur considering~~  
32 ~~hydrogeological conditions, modeling, or any other available evidence.~~

33           (2) ~~An imminent hazard or threat to the environment, public health, or safety~~  
34 ~~exists.~~

35           (3) ~~A violation of any standard in groundwater occurring in the bedrock,~~  
36 ~~including limestone aquifers in Coastal Plain sediments, unless it can be~~  
37 ~~demonstrated that the violation will not adversely affect, or have the~~  
38 ~~potential to adversely affect, a water supply well.~~

39       (k) ~~Where operation of a disposal system permitted under this section results in~~  
40 ~~exceedances of the groundwater quality standards at or beyond the compliance boundary~~  
41 ~~established under subsection (i) of this section, exceedances shall be remedied through cleanup,~~  
42 ~~recovery, containment, or other response as directed by the Commission."~~

43           **SECTION 12.(b)** Section 46(b) of S.L. 2013-413 is repealed.

44           **SECTION 12.(c)** The Environmental Management Commission shall review the  
45 compliance boundary and corrective action provisions of Subchapter 2L of Title 15A of the  
46 North Carolina Administrative Code for clarity and internal consistency. The Commission  
47 shall report the results of its review, including any recommendations, to the Environmental  
48 Review Commission no later than December 1, 2014.

49  
50 **PART VIII. OTHER STUDIES**

1           **SECTION 13.** The Coal Ash Management Commission, established pursuant to  
2 G.S. 130A-309.202, as enacted by Section 3(a) of this act, shall study whether and under what  
3 circumstances no further action or natural attenuation is appropriate for a coal combustion  
4 residuals surface impoundment that is classified as low-priority pursuant to  
5 G.S. 130A-309.211, as enacted by Section 3(a) of this act. In conducting this study, the  
6 Commission shall specifically consider whether there is any contact or interaction between coal  
7 combustion residuals and groundwater and surface water, whether the area has reverted to a  
8 natural state as evidenced by the presence of wildlife and vegetation, and whether no further  
9 action or natural attenuation would be protective of public health, safety, and welfare; the  
10 environment; and natural resources. The Commission shall report the results of its study,  
11 including any recommendations, to the Environmental Review Commission no later than  
12 October 1, 2015.

13           **SECTION 14.** The Department of Transportation shall evaluate additional  
14 opportunities for the use of coal combustion products in the construction and maintenance of  
15 roads and bridges within the State. The Department shall report the results of its study,  
16 including any recommendations, to the Environmental Review Commission no later than  
17 December 1, 2014.

#### 18 **PART IX. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT**

19           **SECTION 15.(a)** Article 14 of Chapter 62 of the General Statutes is amended by  
20 adding a new section to read:

21 **"§ 62-302.1. Regulatory fee for combustion residual surface impoundments.**

22           (a) Fee Imposed. – Each public utility with a coal combustion residuals surface  
23 impoundment shall pay a regulatory fee for the purpose of defraying the costs of oversight of  
24 coal combustion residuals. The fee is in addition to the fee imposed under G.S. 62-302. The  
25 fees collected under this section shall only be used to pay the expenses of the Coal Ash  
26 Management Commission and the Department of Environment and Natural Resources in  
27 providing oversight of coal combustion residuals.

28           (b) Rate. – The combustion residuals surface impoundment fee shall be  
29 three-hundredths of one percent (0.03%) of the North Carolina jurisdictional revenues of each  
30 public utility with a coal combustion residuals surface impoundment. For the purposes of this  
31 section, the term "North Carolina jurisdictional revenues" has the same meaning as in  
32 G.S. 62-302.

33           (c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to  
34 the Coal Ash Management Commission on or before the 15th of the second month following  
35 the end of each quarter. Each public utility subject to this fee shall, on or before the date the fee  
36 is due for each quarter, prepare and render a report on a form prescribed by the Commission.  
37 The report shall state the public utility's total North Carolina jurisdictional revenues for the  
38 preceding quarter and shall be accompanied by any supporting documentation that the Coal  
39 Ash Management Commission may by rule require. Receipts shall be reported on an accrual  
40 basis.

41           (d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash  
42 Management Commission is created. The fees collected pursuant to this section and all other  
43 funds received by the Coal Ash Management Commission shall be deposited in the Coal  
44 Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing  
45 account, and any interest or other income derived from the Fund shall be credited to the Fund.  
46 Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.  
47 The Commission shall be subject to the provisions of the State Budget Act, except that no  
48 unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the  
49 General Fund. All funds credited to the Commission Fund shall be used only to pay the  
50

1 expenses of the Coal Ash Management Commission and the Department of Environment and  
2 Natural Resources in providing oversight of coal combustion residuals.

3 (e) Recovery of Fee. – The North Carolina Utilities Commission shall not allow an  
4 electric public utility to recover this fee from the retail electric customers of the State."

5 **SECTION 15.(b)** Notwithstanding G.S. 62-302.1, as enacted by this section, for  
6 the first two quarters of fiscal year 2014-2015, each public utility shall pay the fee in  
7 G.S. 62-302.1 on a monthly basis. The fee shall be paid by the fifteenth of the following month.

8 **SECTION 15.(c)** Twenty-five receipt-supported positions are created in the  
9 Department of Environment and Natural Resources to carry out the duties in Part 2I of Article 9  
10 of Chapter 130A of the General Statutes. There is appropriated from the Coal Combustion  
11 Residuals Management Fund the sum of one million seven hundred fifty thousand dollars  
12 (\$1,750,000) to the Department of Environment and Natural Resources to support the positions  
13 for the 2014-2015 fiscal year.

14 **SECTION 15.(d)** Five receipt-supported positions are created in the Division of  
15 Emergency Management of the Department of Public Safety to carry out the duties in  
16 G.S. 130A-309.202. The funds remaining in the Coal Combustion Residuals Management Fund  
17 after the appropriation to the Department of Environment and Natural Resources are  
18 appropriated to the Department of Public Safety for the 2014-2015 fiscal year. These positions  
19 shall be used to provide assistance to the Coal Ash Management Commission established by  
20 G.S. 130A-309.202, as enacted by Section 3(a) of this act. The positions shall be assigned in  
21 the following manner: one of the positions shall be the executive director of the staff, two  
22 positions shall be assigned as analysts, one position shall be assigned as a technician, and one  
23 position shall be assigned as administrative. The Division of Emergency Management in the  
24 Department of Public Safety shall consult with the Chair of the Commission in hiring the staff  
25 for the Coal Ash Management Commission. The Division of Emergency Management in the  
26 Department of Public Safety shall provide support to the Commission until the staff of the  
27 Commission is hired, including the designation of an individual to serve as an interim executive  
28 director of the staff.

29 **SECTION 15.(e)** Subsection (a) of this section becomes effective July 1, 2014, and  
30 expires April 1, 2030, and applies to jurisdictional revenues earned on or after July 1, 2014, and  
31 before April 1, 2030. The remainder of this section becomes effective July 1, 2014.

## 32 33 **PART X. SPECIFICATIONS FOR USE OF COAL ASH COAL COMBUSTION** 34 **PRODUCTS IN PUBLIC PROCUREMENT**

35 **SECTION 16.** Article 3 of Chapter 143 of the General Statutes is amended by  
36 adding a new section to read:

### 37 **"§ 143-58.6. Specifications for Use of Coal Combustion Products.**

38 (a) State Construction Office to Develop Technical Specifications. – The State  
39 Construction Office shall develop recommended technical specifications for the use of coal  
40 combustion products that may be utilized in any construction by all State departments,  
41 institutions, agencies, community colleges, and local school administrative units, other than the  
42 Department of Transportation. The technical specifications shall address all products used in  
43 construction, including, but not limited to, the use of coal combustion products in concrete and  
44 cement products, and in construction fill.

45 (b) Department of Transportation to Develop Technical Specifications. – The  
46 Department of Transportation shall develop recommended technical specifications for the use  
47 of coal combustion products that may be utilized in any construction by the Department of  
48 Transportation. The technical specifications shall address all products used in construction,  
49 including, but not limited to, the use of coal combustion products in concrete and cement  
50 products, and in construction fill.

1       (c) Specification Factors. – The State Construction Office and the Department of  
2 Transportation shall consider safety, best practice engineering standards, quality, cost, and  
3 availability of an in-State source of coal combustion products in developing the recommended  
4 technical specifications pursuant to this section.

5       (d) Consultation. – The State Construction Office and the Department of Transportation  
6 shall consult with each other in the development of the recommended technical specifications  
7 pursuant to the provisions of this section, in order to insure that the recommended technical  
8 standards are uniform for similar types of construction.

9       (e) Report of Recommended Specifications. – The State Construction Office and the  
10 Department of Transportation shall report the recommended technical specifications developed  
11 pursuant to this section to the Environmental Review Commission and the Joint Legislative  
12 Transportation Oversight Committee on or before February 1, 2015."

13  
14 **PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

15       **SECTION 17.** If any provision of this act or its application is held invalid, the  
16 invalidity does not affect other provisions or applications of this act that can be given effect  
17 without the invalid provisions or application, and to this end the provisions of this act are  
18 severable.

19       **SECTION 18.** Except as otherwise provided, this act is effective when it becomes  
20 law.